Implementing PACE in New Jersey

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Last Updated: September 22, 2018

Implementing Commercial Property Assessed Clean Energy (C-PACE) in New Jersey

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Key Takeaway:

NJPACE will work with key industry stakeholders to develop an independent Open Market PACE administrative platform, and seek to have it broadly accepted by local governments in New Jersey. Our role as a 501(c)(3) clean energy nonprofit is to maximize the adoption and impact of Commercial PACE throughout the state, engaging all stakeholders in creating a fair and open marketplace that serves the needs of municipalities, property owners, capital providers, and energy services contractors, and provides the economic, ecological, and resiliency benefits contemplated in the current PACE legislation.

1. Introduction

Establishing a successful Property Assessed Clean Energy (PACE) program requires more than enabling legislation. As the C-PACE Alliance has noted:

> When launching a C-PACE program, policymakers naturally focus on the statute as the first step. However, this note emphasizes the importance of carrying the thinking through to the local level where program implementation occurs. Without a local ordinance and a program administrator, the C-PACE program is only one-third of the way toward activation. The slippage between C-PACE policy goals and implementation is significant: while 34 states[1] and Washington, D.C. have enacted authorizing legislation, roughly 20 states have active programs and only 10 states (including D.C.) have closed more than $15 million in C-PACE transactions. Clearly, there is an enormous opportunity to improve the awareness and user-friendliness of C-PACE programs to achieve their full potential.[2]

The aim of this paper is to lay out a proposed strategy for implementing Commercial PACE[3] in New Jersey in such a way as to maximize its impacts and benefits for all stakeholders.

PACE — as most readers of this paper will already understand — is an innovative way of financing clean energy (and in some states, including New Jersey) resiliency improvements, by securing private investment through the municipal Special Assessment mechanism, and arranging repayment through the local property tax system. PACE financing typically covers 100% of hard and soft costs, is spread over the useful life of the improvements, and is non-recourse, non-acceleratable, and off-balance-sheet. Repayments are typically calculated to be less than the immediate savings in energy costs, making PACE projects cashflow-positive to property owners from day one. This effectively allows property owners to implement state-of-the-art energy-efficiency, renewable, and resiliency improvements, and take advantage of the long-term benefits without tying up their own capital.

While most property owners are focused on the savings, PACE has the potential of providing significant public benefits as well. In fact, the preamble to the current NJ PACE legislation (S1611/A1902) states:

a. The implementation of and investing in energy and water efficiency improvements to, and flood and hurricane mitigation projects for, existing properties is a critical component in conserving natural resources and mitigating the effects of floods and hurricanes, and is financially beneficial over time; and upfront costs are a barrier to major energy improvements;
b. PACE legislation provides an innovative way for property owners to finance energy and water efficiency improvements which, in turn, results in property owners saving a significant sum in

[1] Now 36, including most recently Pennsylvania and Delaware.
[2] C-PACE Alliance: "**C-PACE Legislation Passed... So What's the Path to Implementation?,"**
[3] This paper does not address Residential or R-PACE, which we see as being introduced at some future time, and requiring a substantially different administrative infrastructure.

energy costs, helps communities create local jobs, results in lower mortgage foreclosures, and stimulates local economies and lower emissions; and

c. PACE financing will allow New Jersey municipalities to contribute toward meeting community sustainability, greenhouse gas emissions reductions, and energy goals, and will provide a valuable service to the citizens of their communities.

In fact, PACE is a win-win-win financing mechanism — property owners benefit, capital providers benefit, energy services providers benefit, and municipalities and the general public benefit. PACE is fundamentally a way of enabling the transition to the clean energy economy that is needed to mitigate climate change, by making it profitable to invest in building this economy today.

What's needed, however, is more than the general legislative mandate that is provided in the bill. The bill provides the critical legal framework to make PACE viable in New Jersey, but does not specify how the industry will develop or reach critical acceptance across the state.

2. Key Features of NJ's PACE Legislation

New Jersey got PACE legislation in 2011, but unfortunately the existing statute (PL2011, ch.187) is missing key elements that would allow its adoption in the Garden State. Most of the intent of original sponsors (Sen. Bob Smith and then Assembly Deputy Speaker Upendra Chivukula) was deleted from the law by Governor Christie's initial conditional veto, leaving three-and-a-half pages that supposedly allowed towns to establish PACE programs, but in practice made it impossible to do so. Specifically, the law requires that municipalities get prior approval from the Division of Local Government Services (DLGS), part of the Department of Community Affairs (DCA), and under Governor Christie this Division made it clear that it would not grant such approvals. In addition, the law as it went into effect explicitly listed only municipal bonds and county improvement authority bonds as funding mechanisms, and did not authorize direct private financing (the industry's current preferred approach). Moreover, the law does not distinguish Residential and Commercial PACE, and authorizes the Board of Public Utilities to set limits on the amounts of financing made available "to ensure that local programs further the goals of the Office of Clean Energy."

New Jersey PACE made an effort to introduce NJ's first PACE program in Livingston, with the support of Simon Property Group (owner of the Livingston Mall) and local elected and appointed officials. After being rebuffed by the DLGS, our organization focused on amending the law to make at least a Commercial program viable in the state. Several revisions and two vetoes later, the current proposed legislation (S1611/A1902) incorporates the following elements:

i. **PACE is approved for Commercial only**, where "Commercial" is defined as "industrial, agricultural, or commercial property, residential property with five or more dwelling units, or property owned by a tax-exempt or nonprofit entity including schools, hospitals, institutions of higher education, or religious institutions" and thereby excludes single-family residential and multiple dwellings of four units or less.

ii. **Eligible projects** are defined to include:
   i. District heating and cooling systems
   ii. Energy efficiency improvements of all kinds, including "but not limited to" air sealing, insulation, energy-efficient electrical and HVAC equipment, daylighting, energy-efficient windows, energy controls and recovery systems, electric vehicle charging systems, and efficient lighting systems
   iii. Renewable energy systems, including energy generation from "hydrogen, solar energy, geothermal energy, bio-mass or wind energy
   iv. Energy storage systems
   v. Water conservation projects
   vi. Flood-resistant construction, hurricane-resistant construction, shelters and safe rooms, and
   vii. Property owner participation in microgrids

iii. **Sunset and reporting clauses**: The program is set to last for ten years unless renewed by the Legislature, and requires the DLGS to prepare a report "that reviews and assesses all PACE programs operating in the State" after five years, that would "evaluate the PACE programs in effect, and shall review foreclosure rates, cost-effectiveness of PACE projects, reasonableness of costs to property owners, and any other factors the director deems appropriate. The report shall also identify and recommend any legislative changes to the law authorizing the PACE program that may be necessary."[4] The DLGS is not required to "pre-approve" programs, nor can it control or close them.

iv. **Establishing of PACE programs:** Municipalities may establish PACE programs, and both municipalities and counties can "administer" programs, or delegate the administration or any element thereof to any public, private, or nonprofit entity.

v. **Bonds and private financing**: Non-recourse bonds may be issued by a county or municipality, and direct private financing is also allowed.

vi. **The Municipal Ordinance**: "may provide for eligibility requirements for participation in the program and project development guidelines for PACE projects"; "shall establish a form of special assessment agreement to be entered into"; and shall "identify whether the PACE program will be implemented, financed, and managed by the municipality, county, or by a county improvement authority, or by another public entity or private entity." "The municipal ordinance shall prescribe criteria for participation in the PACE program at the time of the initial financing, which criteria shall include, at a minimum, the following:

(a) that PACE financing recipients are either the legal owners of the underlying property or provide the written consent of the legal owners of the underlying property, are current on mortgage and property tax payments with respect to the underlying property, and are not the subject of a default or in bankruptcy proceedings, and
(b) an appropriate ratio of the assessment to the value of the property, but in no circumstance may the combination of a PACE financing and the existing loan-to-value ratio on a property exceed 90 percent of the appraised value of the property including the value of the PACE project. The municipal ordinance shall also require that an appraisal shall be required if one is not conducted by the lender for the PACE project. The ordinance may establish standards for the maximum amount, or duration of PACE

[4] The DCA has informally requested that this and several other clauses of the bill be eliminated, so that municipalities would not be allowed to issue bonds, and DCA would not oversight responsibilities for PACE.

special assessments, or both, but in no event shall the maximum duration of a PACE special assessment exceed 30 years."

vii. **"The municipal ordinance shall require** that a disclosure form summarizing PAC**E** financing risks provided by the PACE program administrator and the lender shall be signed by the owner of each property. The disclosure form shall include, but need not be limited to, the following information:

(a) risks from incorrect or defective improvement design or construction of the PACE project;
(b) risk of foreclosure for failure to pay the special assessment;
(c) imposition of charges or other enforcement for delinquent PACE special assessment payments in the same manner as delinquent real estate taxes;
(d) lack of guarantee of energy savings from the PACE project;
(e) likelihood that completed PACE projects may require ongoing maintenance to meet performance targets;
(f) probability that changes in property occupancy or energy costs may affect energy savings expected from the project;
(g) lack of guarantee by the PACE program or PACE program administrator of availability of local, State, or federal tax credits or other incentives; and
(h) amount of additional fees for actual municipal costs that will be added to the PACE special assessment."

"The municipal ordinance shall also require that the PACE program include the following consumer protection provisions:

(a) the authority of the property owner to cancel the PACE contract within three business days of signing it;
(b) a requirement to provide information to the property owner on the total cost of the PACE project for the life of the agreement including interest or fees to be paid, total number of payments, payment frequency, amount of each payment, and warranty or maintenance obligations; and
(c) a prohibition restricting specific monetary or percentage estimates on property value changes as a result of the PACE project.

viii. **"The amount of a PACE special assessment shall be a specific amount, not to exceed the project costs of the PACE project.** The specific amount of a PACE special assessment, which shall be consented to by the property owner by its execution of a special assessment agreement in the form promulgated by the municipality, shall be deemed the benefit conferred with respect to the property and shall be in lieu of the amount being determined by any other procedures contained in this Title otherwise applicable to determining the actual benefit conferred on the property. No other confirmation or determination of the amount of the PACE special assessment, including, but not limited to the procedure set forth at R.S.40:56-30, shall be required."

ix. **Mortgage Lender Consent**: "Subject to the written consent of existing mortgage holders, a PACE special assessment shall be a single, continuous first lien on the property against which the PACE special assessment agreement is recorded." …

x. "**The lien shall be a continuous first lien** upon the real estate described in the assessment…"

xi. **Not public funds**: "The funds to implement a PACE project may be disbursed to the property owner at execution of the special assessment agreement, or may be disbursed in installments over time. Such funds shall not constitute public funds…"

xii. **Delinquency**: "if any payment of a PACE special assessment is not made within 10 days after the time when that payment shall have become due, or later, consistent with any grace period provided or extended by a municipality for the payment of property tax bills, interest thereon shall be imposed at the same rate as may be imposed upon unpaid property taxes in the municipality, and collected and enforced in the same manner as unpaid property taxes, including by accelerated tax sale if the municipality shall enforce collection of its unpaid property taxes through accelerated tax sale."

xiii. **Non-acceleration**: "However, the balance due on PACE special assessments shall not be subject to acceleration in the event of a default in payment."

xiv. **Survival of assessment**: "Notwithstanding any other provision of law… the PACE special assessment shall survive any subsequent action to foreclose the right of redemption and continue as a first lien upon the real estate."

xv. **Assignment**: "PACE special assessments may be assigned directly by the municipality, and any assignee thereof…" "Notwithstanding any law to the contrary, the assignment shall be an absolute assignment of all of the municipality's right, title and interest in and to the PACE special assessment, along with the rights and remedies provided to the municipality under the special assessment agreement, including, but not limited to, the right to direct the collection of payments due. PACE special assessments assigned as provided hereunder shall not be included in the general funds of the municipality, or be subject to any laws regarding the receipt, deposit, investment or appropriation of public funds, and shall retain such status notwithstanding enforcement of the assessment by the municipality or assignee as provided herein."

xvi. **Amendments to County Improvement Authority law: "**A county improvement authority shall also have as its purpose the implementation, management, oversight, administration, and financing of a PACE program, as defined in section 2 of P.L. , c. (C.) (pending before the Legislature as this bill)."[5]

3. Criteria for Successful Implementation

In May 2018, the C-PACE Alliance issued a 7-page paper on "Elements of a Well-Designed C-PACE Statute and Program to Attract Private Capital and Foster Greater Transaction Volume."[6] That paper could be cited in its entirety here, but here are the key points:

A. **The core principles** that apply to well-designed C-PACE programs include
   a. **Collaboration**: C-PACE stakeholders should collaborate on a continuous basis to achieve common goals.
   b. **Policy Input from Stakeholders**: Policymakers should engage a broad set of stakeholders and take into account best practices learned from other statutes and programs as they craft and amend C-PACE legislation.
   c. **Open-Market Philosophy**: C-PACE programs should encourage open and free-market competition among Capital Providers, project developers and contractors.
   d. **Implementation:** Once a well-designed statute is enacted, policymakers should, if possible, provide support and guidance to the local governments that implement a C-PACE program:
      a) Municipal ordinances must be adopted and

[5] This section is current as of September 2018, and will be updated upon final passage of the bill.
[6] http://www.c-pacealliance.com/what-we-do/publications/

b) The program supervision must be put in place, which requires considering the role and financial sustainability of a Program Administrator.

e. **Standards**: The C-PACE capital providers should help the industry move toward voluntary standards to ensure the most efficient, flexible and low-cost access to capital – especially as it relates to matters that can expedite the creation of a liquid secondary market for C-PACE assets.

We fully support these principles.

B. Key elements in the program provisions include:

- **a. Open Market**
- **b. Strong Credit Security**
- **c. Mandatory Approval by Senior Mortgage Holder**
- **d. No Savings-to-Investment (SIR) Threshold**
- **e. Flexibility in Financing Terms**
- **f. [Clear] Billing and Collection Process**
- **g. Program Administrator Permitted**
- **h. Statewide Consistency**
- **i. Foreclosure Process**

Most of these "key elements" are included in the current NJ PACE amending legislation, with the exception of "statewide consistency." Our proposed **Open Market PACE Platform** is specifically designed to achieve this ***statewide consistency*** objective.

C. Best Practices in Program Administration

- **a. Clarity of Roles**
- **b. Program Administrators' services should be priced *a la carte***
- **c. Program Administrator Fees and Local Government Fees should be "reasonable and appropriate"**
- **d. Program Documents should be created by the Administrator and the Capital Providers working collaboratively**
- **e. Verifiable Project Compliance**
- **f. Fair Access by Capital Providers**
- **g. No Preference among Capital Providers**
- **h. Energy Savings Estimates encouraged but not required for project approval**
- **i. Underwriting should be done by Capital Providers**
- **j. Financing Agreement Forms should be prepared by Capital Providers**
- **k. Efficient Closing Process**
- **l. Property Owner's Satisfaction with the Work of Third Parties**
- **m. Billing Timeframe and Fees**
- **n. Continuous Improvement**
- **o. Standard Form Assessment Contract**
- **p. Procedures for Delinquencies and Foreclosures**
- **q. Payments Process**
- **r. Replicability**

Our proposed Open Market PACE Platform is designed to incorporate all of these best practices, and specifically "to develop a turn-key program (with documents available on its website) that other counties and municipalities within the state can adopt."

D. Elements in Marketing, Education & Training

a. **"**The marketing message should emphasize that C-PACE is an alternative financing tool, as well as a means to promote the adoption of renewable energy and efficiency projects."

b. "If resources and time permit, the Program Administrator should raise local community awareness of the C-PACE program through websites, flyers and local media. The private stakeholders should help market C-PACE as well."

c. "The Program Administrator should offer seminars and speak at public events to explain the program to Property Owners, contractors, and economic development organizations. Stakeholders should assist with education."

d. Training (For Qualified Energy Savings Analysts or Project Developers): If the Program Administrator keeps a list of qualified third-parties to conduct energy savings analysts or project development, then the Administrator must take responsibility for organizing technical training for contractors and engineers. These services can be paid for with a separate fee to contractors and engineers to cover the Administrator's costs.

These elements are fully consistent with our proposed approach.

The PACE Administrator's Role

In addition to the recommendations of the C-PACE Alliance, the Texas PACE Authority has recently issued new guidance on the role of the Administrator in the "PACE in a Box" program.[7] The Texas PACE Act "authorizes local governments that establish PACE programs to delegate the administrative responsibilities for the programs to independent third parties." And "…the working groups have determined that any local government choosing to have third-party administration of its PACE program should select a single, fully independent and transparent entity to perform this important function."

Specifically:

> "The working groups determined that the single administrator model is critical for the success and integrity of each PIAB program established in Texas. As the authorized representative of the local government in connection with its PACE program, the administrator (including the administrator's officers, directors, partners, employees, affiliates and other similarly related parties) must be an impartial intermediary and must not have any direct or indirect interest in or

[7] "*Role of the Administrator of a PACE in a Box Program Additional Guidance* (July 20, 2018)." The Texas PACE Authority is an independent nonprofit that administers "a uniform commercial and industrial PACE program on behalf of local governments." The PACE in a Box program was developed by the TPA with extensive stakeholder participation.

potential benefit to be derived from the outcome of any pending or consummated PACE transaction within the jurisdiction of the local government. Furthermore, the local government should ensure that the administrator will be completely independent and positioned to exercise unfettered judgment when required for the performance of its duties as the local government's authorized representative."

The key recommendations of the guidance are:

1. **Financial transparency and the prohibition of self-dealing**. The authorized representative (including its officers, directors, partners, employees, affiliates and other similarly related parties) shall not:
   - Review, approve or participate in funding any project in which it has or may have a direct or indirect interest or may derive a potential financial benefit
   - Receive or accept any financial benefit from any affiliate or other organization involved in any PACE project within the jurisdiction of the local government (other than event sponsorships)
2. **Revenue Disclosure.** The authorized representative must publicly disclose the sources of all revenue derived by it on an annual basis
3. **Fee Approval and Disclosure.** All fees charged or received by the authorized representative must be pre-approved by the local government consistent with the PACE Act4, publicly disclosed, and reviewed annually by the local government
4. **Marketplace Distortion.** The authorized representative (including its officers, directors, partners, employees, affiliates and other similarly related parties) shall not:
   - Provide or offer to provide any commercial services of any nature for or in connection with PACE projects located within the jurisdiction of the local government
   - Require property owners to obtain services from specific, favored vendors (but the authorized representative may set objective minimum standards for quality assurance that apply to all parties)
5. **Compliance with local government employee conflicts of interest disclosure policies.** The authorized representative:
   - Must at all times comply with all of the local government's employee conflicts of interest and disclosure policies
   - Must at all times comply with all of the conflicts of interest and disclosure requirements applicable to local government employees under [Texas Association of Counties' 2017 Short Answers to Common Questions prepared by Association Legal Department5 or Texas Municipal League's Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors6].
6. **Stakeholder Inclusion**. The authorized representative must provide education, outreach and training to all potential stakeholders including underserved communities and small businesses.

The Open Market PACE proposal meets all of these criteria, except that its governing board will be made up of key stakeholders, including capital providers involved in financing projects within the municipalities where the platform operates. But the OPM staff will operate in a fair, neutral, and conflict-free manner.

Our Conclusion

In summary, then, the criteria for a successful PACE implementation include an independent, fair, and credible administrative platform, following the best practices cited by the C-PACE Alliance, the DOE Working Group on Commercial PACE and others.

In addition, however, the program also has to gain widespread acceptance in communities throughout the state, and has to serve the economic and environmental policy goals that are the underlying justification for the use of the government's Special Assessment power to secure and promote this type of financing. PACE is a remarkable innovation, a valuable financial tool, and a part of the broader transition to a cleaner and greener economy; and it's essential to keep these larger goals in mind if we are to do more than simply provide a lucrative vehicle for private investors, however profitable that might be. It's important to make sure that the benefits that accrue to property owners and to communities are commensurate with the returns expected by the capital providers.

The next several sections will address how we intend to accomplish these larger goals in addition to building an independent and efficient administrative apparatus for New Jersey.

4. Municipal Adoption

New Jersey is a "Home Rule" state, with 565 municipalities. Since municipalities are the only entities with property taxing authorities, only municipalities can "establish" PACE programs. Counties, and County Improvement Authorities, may create PACE financing programs to support the municipalities, but each municipality must first approve an Ordinance establishing a PACE program, incorporating the requirements in the legislative language cited above.

New Jersey PACE has met with more than forty municipalities, typically meeting with Mayors and Business Administrators, and in some instances Tax Assessors and Tax Collectors. There are several municipalities that have indicated a desire to establish PACE programs as soon as the amending law is signed.[8] There have also been several types of concerns expressed, indicating that there are important issues to be addressed in gaining acceptance in a majority of New Jersey municipalities. Most of these issues are operational ones, concerning assessment registration, billing, collection, and transmission of repayments, and procedures can and need

[8] Currently, both Hoboken and Jersey City have expressed an interest in being the first municipality to adopt PACE, and Jersey City has even drafted a set of municipal ordinances that would seek DLGS approval to establish a program under the current statute. Hoboken wants to use the program principally because of the resiliency and microgrid financing options, as well as renewables and energy efficiency improvements. Jersey City has similar issues, and is also home to several Simon properties, for which the company is seeking to use PACE financing for substantial upgrades. Altogether Simon owns fourteen retail properties in New Jersey, all of which would potentially qualify for clean energy improvements. A number of other municipalities have also expressed interest in exploring PACE once the law is signed. Woodbridge Township, which has nearly 100,000 residents, has indicated that it would likely opt to create its own municipal PACE program.

to be worked out to address them. In some instances there have also been questions raised about the appropriateness of towns playing this type of role, which involves some unfamiliar considerations as well as a direct intervention in the private marketplace in support of clean energy improvements on private property. These concerns may arise from a traditional conservative or libertarian perspective, or may be connected with a resistance to sustainability initiatives, sometimes identified with the UN's "Agenda 21," initiatives which are perceived by some constituents as governments seeking to dictate individuals' behavior.[9]

The fact that PACE is entirely voluntary on the part of property owners, and in the case of Commercial PACE initially involve only occasional projects, may alleviate the majority of these concerns. Nonetheless, if towns are going embrace PACE readily there will likely need to be several conditions present:

- A clear motivation and widely-accepted public justification for instituting the program
- An established and credible set of third-party administrative procedures for facilitating and verifying PACE projects, including appropriate software, employee information and education, and standardized documentation
- A demonstrated interest on the part of local property owners
- A shared understanding of the benefits of the program, answers to frequently asked questions, and positive public awareness and perception of the program

We at New Jersey PACE understand these concerns and we are able to address them in ways that foster both public acceptance and stakeholder enthusiasm. Consequently we feel we are well positioned to work with local property owners to persuade municipalities to adopt PACE ordinances and the industry-standard programmatic infrastructure that is needed to make the program as effective and impactful as it is capable of being.

An important aspect of this is our emphasis upon the larger social, economic, and environmental goals of PACE, and the opportunities it offers for local economic development, business and workforce engagement, and the expansion of sustainable and regenerative practices in the community. Municipal officials who understand the benefits, and can make them real for constituents, are more likely to experience successful implementations of PACE and attract more investment and more improvements to their communities.

At the same time, we need to design a framework for the community's participation that provides options for the municipality that make the PACE program workable. Some municipalities may want to create and manage their own PACE programs, while others may want to outsource virtually every aspect of PACE to a third-party provider. While the "burden" placed on the municipality, especially during the first couple of years, is likely to be insignificant, towns may want to delegate even the basic billing and collection of payments back to the PACE lenders. The Open Market PACE platform can accommodate itself to all of these options.

[9] These concerns were expressed passionately directly to the author by some property owners during the several-year introduction of Government Energy Aggregation in New Jersey by another nonprofit.

5. Third-Party Administration

As noted above, the availability of credible and effective third-party administration is essential to the creation of successful PACE programs, and specifically to being able to scale up the adoption of PACE throughout the state. While a handful of municipalities may choose to develop their own programs, they are also likely to accept an established open-market program. A significant number may be unwilling to adopt PACE unless such a program is available; and in its absence may embrace “exclusive” arrangements with vertically-integrated PACE providers. We have worked hard to counter that tendency, which results in closed markets, favoritism, and monopolistic outcomes, by insisting on language in the bill that allows municipalities to hire more than one administrator. If that administrator is an open-market, industry-standard, and neutral vehicle, supported by an entity looking to complete a project in the community, it is more likely to be accepted as the sole PACE Administrator for a town, or at the very least a supplemental administrator approved by the municipality.

As noted above, many towns are ready to move forward with PACE once the law is signed, but getting them to approve a specific PACE administrator is another matter. It will require some established credibility, even if all the town needs to do is “endorse” it, or join a network of municipalities approving the platform. At the same time, such a joint network may be viewed as an example of a “shared service,” much advocated but rarely practiced in NJ, and qualify for some special treatment or incentives from the state government.

In a separate proposal,[10] we suggest an “industry-owned” open-market administrative platform. The platform would be operated by and for the principal stakeholders in the PACE ecosystem — property owners, capital providers, municipalities, developers, and energy services contractors. A management committee of stakeholder representatives would oversee the development, operation, and continuous improvement of the platform.

The **Open Market PACE** proposal includes an assessment of third-party administration models, including US Department of Energy studies, and specifically proposes that an open-market administrative platform *owned by the industry* can be created that serves all parties fairly and minimizes the costs to the property owner. It also includes an operational plan for building a state-of-the-art submission and processing platform, enrolling municipalities in authorizing the platform to act as an Administrator and a conduit for validating and approving PACE projects.

Where the municipality wants to design and operate its own program, Open Market PACE will interface with that program in a way that is tailored to the local municipality’s needs, while maintaining the standardization of documentation required to make PACE in NJ fully scalable.

[10] “*Proposal for an industry-owned* **OPEN MARKET PACE** ADMINISTRATIVE PLATFORM FOR NEW JERSEY,” included as an attachment, and parts are incorporated in Section 8 of this report.

6. Creating an Open Marketplace

It's absolutely essential to a successful implementation of PACE that there be an open marketplace. This means no exclusive deals between towns and PACE providers, and no collusion between the administrative platform and any particular capital provider. Projects will get done at a meaningful clip if and only if originators and PACE capital providers believe the market is fair, open, and neutral. New Jersey PACE has worked hard to establish the foundation for a statewide open market through discussions with policy makers and legislators.

There are exclusionary agreements in some states, which serve only to slow down the uptake of the program and raise the costs to property owners. Commercial property owners almost always have alternatives to PACE financing. Even without any major obstacles to adoption industry experts suggest that only one in three proposed projects actually moves forward; some find other financing methods, while others simply don't get done.

If the goal is move the built environment and infrastructure to a carbon-free, renewable energy, and zero waste platform, private sector competition is typically what makes *the* difference between a successful implementation and a lackluster or stagnant program. At this point there is a vast gulf between the *potential* for PACE improvements and the industry's ability to focus resources and expertise on any given region. If we want PACE to be successful in New Jersey, we need to make sure that it has the necessary and sufficient conditions required for repeatable successful execution.

The goal of this discussion paper is to lay out a practical pathway to the successful implementation of PACE in New Jersey—creating a robust PACE industry, improving buildings, and cutting greenhouse gas emissions and wasted energy; and then to engage the process of fulfilling on the plan in partnership with other stakeholders in the PACE ecosystem.

7. Understanding the PACE Ecosystem

Once the basic concept is understood, PACE is not that complicated. By virtue of its governmental imprimatur, it comes ahead of any private mortgage, though it cannot be accelerated in the event of a default. It stays with the property, even through a foreclosure. The intrinsic value of the PACE assessment as a mechanism is best understood by recognizing that, notwithstanding any other possible risks, securitized portfolios of PACE projects routinely obtain AAA ratings from the major rating agencies. PACE financing operates in a middle ground between low-interest bonds and mortgages and high-risk / high-reward or speculative investments. Once created and packaged, PACE assessments can be repackaged and resold to long-term investors at a significant premium.

The key players therefore are the financiers. PACE is above all an innovative structured financing tool, a piece of social or economic technology every bit as innovative and as important as new energy inventions. Unless projects as “financeable,” they just won’t happen. Conversely, without needed, worthwhile, and demonstrably cost-effective projects, and the legal protections guaranteed by PACE legislation, PACE financing cannot be deployed. And the complex balancing of various stakeholders’ requirements frequently requires adjustment or fine-tuning.[11] Consequently state and local governments and legislators are key parts of the ecosystem as well.

Local commercial banks are, moreover, in a unique situation with regard to PACE. On the one hand, to the extent that they hold commercial mortgages, they may be asked to provide lender approval for PACE projects financed by the larger national players. On the other hand, they stand to benefit if they can enter the local PACE market themselves on fair and competitive terms. The combination of high-level security with above-average interest rates and fees on PACE loans, makes them an ideal opportunity where banking regulations do not preclude them. Engaging the local commercial banks has, however, proved challenging, and our early efforts to enroll them backfired. The NJ Bankers Association came out against the bill when it included residential. But we believe they are neutral as to Commercial-only PACE.

Other community organizations such as nonprofits are also important PACE stakeholders, both as institutional property owners (e.g., churches, private schools and universities, hospitals, etc.) as community development advocates. Sustainable Jersey Green Teams will also make great C-PACE ambassadors. We believe it’s critical to the ultimate success of PACE to engage all sectors, both as representatives and as individual beneficiaries. If the present moment requires “all hands on deck,” then PACE is a tool every community leader should know about.

Mechanically, the underlying processes also need to perform to the highest standards of excellence—projects have to be competently designed and implemented, so that property owners receive significant savings, and the community sees meaningful reductions in harmful emissions. But this means that professionals, contractors, manufacturers, and civil servants have to act with integrity to ensure that PACE investments are indeed creating both short and long-term economic value.

All of these actors—property owners, contractors, design and engineering professionals, energy auditors, capital providers, real estate experts, ratings agencies, and government employees—need current, accurate, and up-to-date information, as well as in-depth training and education, and hands-on experience in their respective domains of activity. A good administrator understands how all of these actors operate synchronously, and provides a seamless and mostly invisible web of communication to enable these elements to be coordinated in order to produce the desired final outcome.

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[11] As a recent example, note the unintended consequences of California’s recent strengthening of consumer protections for private homeowners; as noted by Cisco Devries (the inventor of PACE), the overly-stringent bankruptcy and property-tax payment provisions, originally supported by R-PACE providers, actually resulted in a more than 40% cut-back in otherwise-qualified residential projects that historically have performed without significant problems.

8. The Open Market PACE Administrative Platform

As a result of these considerations, New Jersey PACE is proposing an industry-designed, -led, and -managed administrative solution, to operate on a state-wide, open-market, and neutral platform. Our basic proposal, added here as an attachment,[12] is being circulated to the capital providers and other key stakeholders in order to ascertain the level of support that can be obtained from the industry to meet the needs of commercial property owners in the state.

The advantages, in our view, are considerable, but so too are the challenges. To ask the major industry players to collaborate on providing an Open Market PACE platform raises a number of both ethical and practical questions. Can they trust each other to play by the rules, and avoid conflicts of interest? Will enough of the key players sign on to fund the startup costs? Can they get along together well enough to oversee the management of the platform as a neutral entity? Will other PACE programs, that are not members, also be able to use the platform?

These are real concerns, and we need to face them head on. But we appear to have few really viable alternatives. New Jersey PACE does not have the resources to support the initial 1-3 year startup costs on its own, and cannot sustain the program until it begins to pay for itself. We could join forces with another administrator, but only by establishing an exclusive and potentially compromised arrangement. The proposed legislation permits municipalities to enter into agreements with multiple administrators, so vertical PACE providers are likely to seek exclusive agreements, enter into pay-to-play arrangements, and try to corner pieces of the market. It's not clear that a local nonprofit administrator can compete and/or survive, without the backing and support of the major players.

Our goal remains that of opening up a competitive, efficient, and thriving market for energy efficiency, renewables, and resiliency in New Jersey. As a fallback strategy, we will build a platform capable of providing the type of administrative support that the C-PACE Alliance and others are looking for. But progress is likely to be slow if the program is not widely supported, and NJPACE will seek to generate the revenue needed to expand the program by financing deals.

One other possible option is to alter the legislation. Some administrators argue for a single, statewide, mandated PACE platform, and that strategy has an appeal to those who are centrists and do not inherently mistrust government. But apart from the fact that this would likely delay the introduction of PACE by at least another year, there's no guarantee that a state-appointed administrator would be able to create the kind of open, thriving market that we see in a handful of states. The cost of bringing more control to the industry is that it throttles demand and hamstrings supply. There are several states with model legislation that are simply not generating the potential interest or the evidence of the rapid or widespread adoption of PACE

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[12] Attachment D, "*Proposal for an industry-owned* **OPEN MARKET PACE** ADMINISTRATIVE PLATFORM FOR NEW JERSEY."

financing. It seems to us preferable to try *something* rather than waiting for a consensus to emerge on another legislative model that goes back to square one.

9. Development Strategy

Consequently our development strategy, as this point in time, remains flexible. The priority is getting the legislation passed and signed by the Governor, and that has to be priority one until it is accomplished. Using our web site, email lists, and social media tools we intend to keep pressing the administration to keep its commitments to us and to the people of New Jersey.

But while we are doing that we believe we need to continue to plan, to build alliances and coalitions, and advocate for the most effective implementation of Commercial PACE that we can envision. This begins with selling the idea of an independent, neutral, industry-owned and managed platform, and raising the money needed to build it.

All the rest can be worked out. But it won't happen without these first two efforts—the legislation and the administrative platform—being successfully launched and communicated to NJ's 565 municipalities, 21 counties, and thousands of large and small property owners throughout the state. Property owners are willing to do the right thing, if they're given the means to do so.

10. Conclusion: Roadmap to a Clean Local Economy

The ultimate goal of PACE is to facilitate the transition of our entire built environment to a cleaner, greener, and more resilient space in which to live and work. We advocate beginning with the introduction of Commercial PACE, which avoids most if not all of the complicated issues currently surrounding Residential PACE. C-PACE requires mortgage lender consent, which means that bankers must be convinced that the project will improve the asset value of their collateral and save the owner money, making them better able to make their mortgage repayments. While PACE financing is currently provided mainly by a small number of fairly specialized national lenders, it seems inevitable that regional and local bankers will recognize the opportunity to make these types of loans to their existing customers without foregoing their lien priority on the real estate.

From the property owner's point of view it should be a no-brainer: there's no requirement for upfront capital, estimating payback periods, or wasting further dollars on dirty energy or obsolete equipment. On the contrary—someone else is offering to pay for the improvements to *your* property and save you money. And it solves the so-called "split incentive" between property owners and the tenants who typically receive the savings from energy efficiency improvements, by allowing property owners to pass the prorated costs of the improvements onto the tenants also. In fact PACE addresses virtually all of the obstacles now holding property owners back from making improvements that are timely, beneficial, and typically cashflow positive.

The potential benefit to the local community include better buildings to live and work in, local jobs, and reduced emissions. It's taking advantage of the long-term cost savings to make investments that benefit the environment *and* are profitable today. From the municipality's standpoint, PACE is a business attraction and retention strategy, and while it may not generate new tax revenues immediately it is upgrading the value of commercial properties in the jurisdiction, which has long-term beneficial consequences.

Overall, PACE means investing in the future we want for ourselves and our children. By making clean energy and resiliency improvements readily financeable, it offers a unique opportunity for our society to rebuild itself. The money is there. Let's get it done.

The plans and reports are also there that provide an operational roadmap for PACE to become one of the main levers for transforming our economy and our society and restoring our environment. In the attachments we provide some of our detailed proposals for both policies and programs. We invite all interested stakeholders to become "part of the solution," by making their respective contributions, monetary or otherwise, to the development of the PACE ecosystem in New Jersey—and by taking full advantage of the opportunity to grow their businesses while becoming more efficient, saving money while doing the right thing, and restoring and revitalizing their communities, and making them more resilient for tomorrow.

Our approach involves "unfolding our trajectory from the future that we want fulfilled." We will provide proposed budgets, strategies and immediate tactics, and further confidential details to interested stakeholders on request and as we reach out to them. Please let us know what you bring to the table and how we can work together to achieve our common goals.

11. Attachments

Attachment A: The Role of PACE in NJ's Clean Energy Master Plan

THE ROLE OF PROPERTY ASSESSED CLEAN ENERGY (PACE) IN NEW JERSEY'S CLEAN ENERGY FUTURE

A contribution to NJ's 2018 Energy Master Plan Reassessment

New Jersey PACE

Saturday, September 22, 2018

Foreword

NJ's Energy Master Plan (EMP) is not just a roadmap for the state's energy policy, it's also a guide for industry and the private sector. It's important for businesses and property owners to have a sense of what's coming down the road, and what's likely to have an impact on energy costs, technologies, and regulations. With the election of Phil Murphy, an avowed "clean energy candidate," a reassessment of the EMP is both timely and important. In the early months of the new administration several laws were signed that set the table for a new era, and a new energy plan. The solar bill and the nuclear bill occupied a great deal of legislative and gubernatorial attention, and were finally passed and signed into law in the spring.

Some of the major issues that the state needs to confront — including offshore wind, emissions reductions, and the need for greater resiliency — were also laid out in the Energy Transition report published soon after the Governor took office. This report covered a number of important areas, but did not mention Property Assessed Clean Energy (PACE). Nonetheless it is likely that PACE will play an increasingly important role in NJ's clean energy future.

What is PACE?

PACE is a means of financing energy efficiency, renewables, and resiliency improvements (including water conservation, floodproofing, hurricane-resistant construction, and so on), that is gaining momentum across the country. PACE allows property owners to make energy and resiliency improvements with 100%, long-term, off-balance-sheet financing. This financing is secured by a voluntary Special Assessment collected by the municipality. Introduced in California in 2008, thirty-five states and the District of Columbia have laws enabling PACE, and 20 (?) of these states have programs. While PACE is law in many of our neighboring states, including Pennsylvania, New York, Connecticut, Rhode Island, Maryland, Virginia, and Washington DC, implementation is lagging for a number of reasons, including legislative obstacles and a lack of streamlined, cost-efficient, and independent administration in states including New Jersey.

In New Jersey, the existing PACE statute (PL2011, ch.187) contains unworkable provisions which prevented the creation of local PACE programs, and fails to incorporate many important conditions that create a robust marketplace for clean energy and resiliency financing. Amending legislation is likely to be approved by the new Murphy Administration this year, which will open up a major new market for financing renewables, efficiency, and resiliency in the Northeast. The state has high energy costs and an aging industrial and commercial infrastructure that offers an optimal opportunity for self-renewal, with a wide-open market for sustainable and profitable "clean and green" development.

A major infusion of new investment is an opportunity for the revitalization, regeneration, and reinvention of sustainable local communities. The ultimate goal of PACE — and of similar structured finance options[13] — is to finance the long-term transition to clean energy, climate-adapted buildings, and low- to no-emissions from buildings. The expectation is that New Jersey will approve Commercial PACE in the fourth quarter of 2018.

What Difference Will It Make?

PACE has the potential to literally remake and transform the built environment around us. Major energy efficiency retrofits can make our buildings both more efficient and more comfortable year-round. On-site renewable energy generation produces a double or triple value-add: the savings on the actual energy produced, the displacement of carbon-emitting generation, and the proximity to the user are all benefits realized by the property owner with no requirement for an upfront capital investment. Fiscally-driven property owners will typically demand that their ongoing savings always exceed their ongoing costs. The good news is that with PACE, property owners reap immediate and ongoing cost savings while using someone else's money in the form of a PACE assessment. Meanwhile, the investor is receiving an attractive rate of return on an investment that is highly secure, being repaid through the town's property tax collection mechanism.

There are very strong market incentives, therefore, to the deployment and utilization of private capital, that are enabled by state PACE legislation that allows municipalities to exercise a governmental power, at literally no cost to the public, to secure the improvement loan. The estimated potential for investing in existing buildings alone exceeds $130 billion in the state, based on an informal market assessment by New Jersey PACE. One of the fastest new applications for PACE is in new construction, where the "green" elements of the project may represent up to 30% of the cost, thereby reducing the requirements for equity or more costly mezzanine financing. PACE is expected to become a standard component of a real estate developer's capital stack.

[13] As a 501(c)(3) nonprofit, NJPACE has developed two new innovative structured finance products designed to implement similar features to PACE, which are intended to "jumpstart" clean energy projects in localities where PACE is not available. For further information, see www.RegenerativeFinancing.org.

Consequently PACE may prove to have as great (if not a greater) impact on building performance as the historical deployment of incentives through the NJ Clean Energy Program. PACE does not compete with any of these incentives, but rather provides a complementary mechanism to facilitate the uptake of both programs. Financing whatever is *not* covered by subsidies or other incentives simply removes another barrier to property owner acceptance.

What are the Projected Benefits?

Based on studies by the Rockefeller Brothers Foundation, Deutsche Bank, Navigant, and others, the estimated economic and environmental returns on this type of investment include:

- Fifteen local job-years per $1 million invested
- Approximately $2.30 of public and private benefits for each $1 invested
- Savings of 25-50% on energy costs for buildings and industrial processes
- Corresponding reductions in emissions of CO2

Leading to, e.g., an estimated 195,000 job-years over ten years; nearly $300 billion in improved asset and community values; and a reduction in emissions of as much as 15-20% (about half of the 40% contributed by buildings). These are of course rough approximations, but they're enough to show that PACE investments are win-win-win propositions — good for property owners, good for investors, and good for the environment.

Residential, Commercial, or Both

Based on the language of the proposed PACE bills (A1902/S1611), New Jersey seems poised to enact Commercial PACE (C-PACE), only, at this time, with Residential (R-PACE) being considered later. The arguments for this are both political and practical. Residential and Commercial PACE are really two different programs at almost every level except the recording of the Municipal Special Assessment agreement. The professionals, contractors, and capital providers are typically different, and use different assessment criteria in approving PACE transactions. Commercial PACE in New Jersey is expected to require mortgage lender consent by law. R-PACE typically includes no more than lender *notification*, because in most cases it's impossible to get lender consent as a result of syndication, since it is difficult to identify a mortgage lender able to provide consent. Consumer protection, eligibility, and credit requirements are also very different.

R-PACE is currently working in only three states — California, Florida, and Missouri — but in these states it is also a much larger and more homogeneous market than C-PACE. Volumes of R-PACE investment are dwarfing Commercial at a rate of more than five to one: the latest PACENation figures show a cumulative $5.2 billion worth of R-PACE projects vs. $690 million for C-PACE. Consequently R-PACE is likely to have an even greater economic, social, and environmental impact on the state.

While Residential PACE is expected to have an even greater impact than Commercial PACE, when it is enacted into law in New Jersey, R-PACE has been controversial for several reasons:

1. It has been opposed by the Federal Housing Finance Agency (FHFA), the conservator for Fannie Mae and Freddy Mac, which together account for more than 80% of all residential mortgages
2. It has been opposed by some mortgage bankers and realtors
3. It has been compared, in widely-publicized ***though factually inaccurate*** media stories, to the subprime mortgage crisis
4. Because commercial property owners have access to more professional/advisory services as they navigate PACE, it is believed that more safeguards are needed in Residential PACE to avoid perceived or real consumer misunderstandings, including contractor or lender misrepresentation.

New Jersey PACE supports the introduction of Residential PACE as soon as practical in New Jersey, given the extraordinary potential impact on families saving money on energy, improving the building stock of the state, creating jobs and economic development, increasing resiliency and reducing carbon emissions. Ultimately, both R-PACE and C-PACE are important in achieving the greatest level of impact.

PACE in the Broader Context

In its requests for comments, the BPU has asked that respondents address a series of questions. The following are some responses to the most relevant of these questions concerning PACE.

Clean and Reliable Power

1. **General**
   - For the purposes of the Energy Master Plan (EMP) and reaching Governor Murphy's goal of 100% clean energy usage in New Jersey by 2050, how should clean energy be defined?
   - Should the definition of clean energy contain flexibility between now and 2050 to allow for transitional fuels to be used and phased out over time? What intervening steps should be taken to complete the transition?
   - What is the most significant obstacle to getting to 100% clean energy by 2050? How can the state address it?

Comment: PACE can be used to cover a very broad series of measures defined as "renewable," including not only solar, wind, biomass, etc., but also combined heat and power (CHP) and other so-called "transitional" methods. Most importantly, for the purposes of PACE, the definitions of "renewable energy" are flexible enough to incorporate emerging technologies. Moreover, it is likely that the "most significant obstacles" to getting to 100% clean energy are:

- the availability of capital, which PACE addresses directly.

- getting the appropriate information to eligible property owners, along with easily understandable and financially compelling opportunities and instructions. It would be valuable for the BPU/Office of Clean Energy to promote PACE, along with OCE's programs

2. **Transition and Technology**
   - How can the State immediately begin to transition to clean energy production and distribution? What intervening steps should be considered to clean existing technology? How should stranded costs be addressed?
   - How should the state analyze the construction of additional fossil fuel infrastructure during the transition? How can the state plan to accommodate this infrastructure in both its short-term and long-term clean energy goals? What statutory or regulatory changes will be needed for the state to make and implement these determinations?
   - How should the state invest in and encourage innovative technologies for renewable energy and energy efficiency?

Comment: Implementing PACE is likely one of the most immediate and practical steps to accelerate the transition to clean energy, by making capital available to private property owners to cover the costs of the switch to cleaner technologies.

3. **State Policy**

- Evaluate existing clean energy policies and programs: where are they most/least effective, and are they aligned with the 100% clean energy by 2050 goal? If not, what modifications can be made, if any?
- How should the state integrate low use property, such as brownfields and blighted zones, into new clean energy economy development?
- How should the state address the baseload needs v. intermittent elements of clean energy generation? What is the role of energy storage in the conversion to 100% clean energy?

Comment: PACE addresses one of the principal weaknesses of existing clean energy policies, i.e., the need for financing costs that are not covered by existing clean energy incentives. It can be used in addressing the challenges of brownfields and blighted zones, and can be used to finance energy storage improvements.

4. **Planning and Zoning**
   - How can clean and reliable power support the expansion of clean transportation?
   - Is there a role for communities in local energy planning and, if yes, what should it be? Are there opportunities for public-private partnerships to aide [sic] communities undertaking this planning?
   - What portfolio mixtures can the state utilize in achieving its 100% clean energy goal? What can a transition portfolio mixture resemble in 2030 and what portfolio mixtures can the state utilize in 2050?

- Should changes be made to zoning and planning laws and requirements to allow for the development of clean energy generation?

Comment: PACE is a form of public-private collaboration, and directly involves municipalities in fostering local clean energy improvements. It does not require changes in portfolio standards or zoning and planning laws, but can readily adapt to such changes and expand their impact locally. PACE provides a unique opportunity for communities to promote clean energy cost savings and carbon reduction to their constituents – to ensure that every property owner knows their eligibility for PACE (Commercial PACE, initially, and then Residential PACE).

5. **Economic Growth and Workforce Development**

- How should the state address the workforce development needs associated with the transformation to 100% clean energy?
- How can the transition to 100% clean energy grow New Jersey's economy and create new innovative and high paying careers for New Jersey residents?
- How can the State encourage, require, or otherwise develop a robust supply chain for all clean energy industries?

Comment: PACE can play a major role in addressing these challenges, by creating new jobs, careers, and supply chain improvements as part of the private sector's development, without requiring additional public expenditures.

6. **Environmental Justice**

- How will the State consider and integrate overburdened communities into clean energy advancements?
- What efforts are most successful towards making clean energy and energy efficiency measures affordable and accessible to all?
- How can the state play a role in ensuring that disproportionately impacted communities receive opportunities and benefits connected to the clean energy economy?

Comment: Again, PACE can play a major role in addressing these environmental justice challenges, by providing 100% private capital for investments into "overburdened" and "disproportionately impacted" communities.

Reducing Energy Consumption

1. **General**

- What energy efficiency, peak demand reduction, and demand response programs and systems will assist in helping keep energy affordable for all customer classes, especially as technology advances in areas such as electric vehicles or heating and cooling, which will potentially increase electric energy usage?

- With the coming requirement that all commercial buildings over 25,000 sq. ft. be benchmarked through EPA's Portfolio Manager, what programs should be created to help with benchmarking and reduction strategies?
- What are the key non-energy benefits associated with energy efficiency? How can their value best be considered in cost-benefit analyses?
- What should the role of ratepayer funded programs, whether state or utility run, be in achieving reduction strategies?
- What type of educational outreach is needed to advance energy efficiency throughout New Jersey?

Comment: PACE can be utilized to maximize energy efficiency improvements, peak demand reduction, and commercial-building benchmarking. In fact, it's been estimated that 60% of all PACE projects to date are focused on energy efficiency, and more than half the remaining projects are mixed EE and RE projects. In NJ, if current proposed legislation is approved, PACE can also be used to finance resiliency improvements. It can reduce the need for ratepayer-funded programs, and private-sector PACE marketing efforts can be leveraged to expand and enhance educational outreach regarding energy efficiency as well as renewables.

2. **Technology**

- What advances in technology should be considered as part of a strategy to reduce energy consumption? What technologies could complement and advance existing energy efficiency efforts?
- What are the intermediate timeframes and pathways to these new or enhanced technologies and energy efficiency and demand response systems?
- How do we best utilize data analytics for energy efficiency?
- What is the role of blockchain, IoT, bigdata, 5G, and other specific technologies in energy efficiency?

Comment: PACE is "technology-agnostic" but does typically require demonstrated cost effectiveness in implementing new measures and approaches. Reporting on PACE improvements can be part of an overall data-driven strategy to reduce energy consumption.

3. **State Policy**
    - How can the state play a strong role in reducing its energy consumption?
    - Which strategies should be state-led, and which ones should be advanced by the private sector? What other players are important leaders in energy efficiency?
    - Should the state require energy efficiency in particular projects receiving state incentives?
    - Should the state play a role in encouraging pilots of different "next generation" buildings? How could the state foster the implementation of net zero or passive buildings projects? How could that impact and restructure redevelopment efforts?
    - What Treasury design standards or procurement policies should be updated to reflect and encourage energy efficiency in state building designs or protocols?

Comment: PACE requires state legislation to permit and encourage local adoption, but such adoption is typically advanced most effectively by the private sector. PACE can also be used to offset the private-sector burden of energy-efficiency requirements, next-generation buildings, and additional standards in design, protocols, and procurement.

4. **Codes and Standards**
    - What portion of the overall energy savings in the transportation, heating, processing, and cooling and electricity markets should be achieved through advanced and enhanced building energy codes and appliance standards systems?
    - How should each sector — residential, commercial and industrial — be considered in terms of codes and standards updates towards reduced energy consumption? In terms of energy efficiency, are certain sectors more adaptable or important than others?
    - What type of zoning changes or incentives should be considered related to green infrastructure? How can these be achieved?
    - What are some examples of existing or potential advanced building energy standards or metrics? (Examples include: net zero energy, Passive House, Living Building Challenge, etc.) How could these be implemented in New Jersey to accelerate greenhouse gas emissions reduction in new and existing residential and commercial buildings?
    - Are there barriers to implementing new energy efficiency codes for building inspectors? How can potential code updates be made less burdensome for inspectors in order to increase compliance and uniformity?

Comment: PACE can be adapted to and used to facilitate improvements in codes and standards in each building sector, and can make such improvements less burdensome for the private sector.

5. **Security**
    - How can energy efficiency and peak demand reduction strategies assist in ensuring enhanced energy security, reliability, and resiliency in the energy markets?
    - Should strategies across the transportation, residential, commercial, industrial, and electricity generation sectors vary based on differing security risks?

Comment: PACE can be adapted to and used to facilitate improvements in security-related energy strategies.

6. **Economic Growth and Workforce Development**
    - What new or expanded manufacturing could be developed related to energy efficiency?
    - What associated jobs and training will be needed in the new clean energy economy (particularly regarding reducing energy consumption)?

- What type of overall workforce training is needed in the energy efficiency industry, whether for maintaining systems, installation and inspection, or in other areas?
- What type of educational outreach is needed to advance energy efficiency in the workplace?

Comment: The widespread adoption of PACE supports all of these strategies, and adds jobs and careers related to financing and project origination to those involved in the direct implementation of energy efficiency technologies. Any project applying through the Office of Clean Energy should be provided with information on accessing PACE financing for the balance of payments, beyond subsidies and other benefits the state provides.

7. **Environmental Justice**
   - How can the state be responsive in helping keep clean energy affordable in communities that are disproportionately impacted by the effects of environmental degradation and climate change? How can the state play an active role in improving the condition of older building stock and encouraging energy conservation measures in communities that are disproportionately impacted by the effects of environmental degradation and climate change?
   - What efforts are most successful towards making clean energy and energy efficiency measures affordable and accessible to all?
   - How can the state play a role in ensuring that disproportionately impacted communities receive opportunities and benefits connected to the clean energy economy?

Comments: Again, PACE can play a positive and supportive role in offsetting environmental injustice impacts, by providing readily-available private financing to improve building stock in LMI communities, encouraging energy conservation measures, and making clean energy benefits affordable and accessible to all.

For more information, please contact:

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Attachment B: Basic Information Sheets

New Jersey PACE: Financing Breakthrough

Save money on building energy costs, immediately
100% off-balance-sheet financing, no upfront costs
Transferable upon sale; costs can be prorated to tenants

COMMERCIAL BUILDING OWNERS & TENANTS

A New Financing Mechanism

PACE stands for "Property Assessed Clean Energy," an innovative mechanism for financing energy efficiency and renewable energy improvements. Up to now, these projects required upfront capital and long payback periods. With PACE, clean energy projects are 100% financed with no upfront costs, and without adding to the property owner's balance-sheet liability. Projects are designed to be cash-flow positive, saving money from the start. Repayment is through a Special Assessment on the municipal tax bill, making it non-acceleratable, non-recourse, and fully transferable on sale. Investment tax credits, solar renewable energy certificates (SRECs), and accelerated depreciation accrue to property owners.

New Jersey PACE (NJPACE), a project of **Possible Planet**, a 501(c)(3) nonprofit, enables commercial, industrial, agricultural, multifamily, and non-profit property owners to access relatively low-cost private capital to enable these improvements.

Amending PACE legislation in New Jersey is expected to be signed into law in 2018, and will include flood, storm and water resiliency improvements under PACE.

What makes PACE work?

- 100% financing, no upfront investment, "off-balance sheet" transaction, not dependent on owner's credit
- Amortization is based on useful life, up to 30 years, resulting in immediate positive cash flows
- Repayment becomes a "special assessment" attached to the property tax bill, providing security to investors
- Assessment can be shared with tenants who have triple net and modified gross leases
- Increases net operating income (NOI) and asset value
- If property is sold, obligation passes to new owner

Eligible Clean Energy Improvements

- High efficiency lighting
- Heating ventilation air conditioning (HVAC) upgrades
- High efficiency chillers, boilers, furnaces, water heating systems
- Building enclosure/envelope improvements
- Building automation (energy management) systems
- Renewable energy systems (solar, wind, etc.)
- Cogeneration or combined heat and power (CHP)
- Smart micro grids, back-up systems, and storage

See **NewJerseyPACE.org** for a complete list.

Tenanted Buildings

Owners sometimes hesitate to make major energy improvements because the economic benefits typically accrue to tenants in triple-net lease arrangements. With PACE financing, both owners and tenants are benefited, overcoming the so-called split incentive problem.

Owners get building improvements and higher property values, while being able to pass on both energy savings and pro rata assessment payments to tenants. Major energy efficiency upgrades also generally provide more healthy and comfortable environments.

Both attraction and retention of tenants are increased, and building owners typically see an increase in NOI, net operating income.

Tenants seeking improvements can now make a compelling case to their landlords. PACE financing is widely seen as overcoming most, if not all of the barriers to implementing clean energy improvements.

possible planet NJPACE

What types of buildings are eligible?

The property must be zoned commercial, industrial, agricultural, nonprofit, or multifamily (5 or more dwelling units), and have a property tax ID. All legal owners of the property must sign the financing application. The property must be current on property tax and assessment payments, and have no involuntary liens, defaults, or judgments. Where there is a mortgage, the owner must obtain mortgage lender consent. The building must be located in a municipality that has adopted an ordinance approving the **NJPACE** program.

Hospitals and Health Care Centers

Both for-profit and nonprofit hospitals and nursing homes can take advantage of PACE financing to implement better storm/flood emergency and energy-independence improvements. Assessment-based investments provide immediate opportunities for energy savings, improved control and back-up systems, and on-site clean energy installations, including renewables and cogeneration. Tax equity investors may also be available in some cases.

Multi-Family and Condominiums

Managed residential properties with 5 units or more can also qualify for financing through New Jersey PACE. In the past, individually-metered tenants were often the only beneficiaries of energy efficiency improvements, and landlords were reluctant to invest capital. Under PACE, building owners can implement upgrades with 100% financing and no upfront capital, making their buildings more competitive. Owners get tax credits, incentives, and accelerated depreciation provisions, where available, to offset their monthly assessments.

Condominiums pose special problems for clean energy systems, but PACE offers meaningful solutions. The cost of improvements on common areas, including not only community facilities but also the roofs and exteriors of individual units, can be assessed to the condominium association, with modest increases in fees to unit owners, offset by lower energy costs.

Revitalizing Downtowns & other challenges

NJPACE offers a way to kickstart development in a number of challenging situations — from Main Street redevelopment, to the adaptive reuse of existing “white elephant” commercial and industrial structures, to the full-scale energy reengineering of for-profit or nonprofit buildings.

Summary of Benefits to Building Owners

- 100% upfront financing for qualified energy upgrades
- No cash investment is needed
- Off-balance sheet financing allows owners to use their credit elsewhere
- Cash-flow for energy projects is positive from start
- Owners without strong credit ratings can be approved
- Allows for deeper energy upgrades because the financing offered is payable over an extended period (up to 30 years)
- Upon sale, PACE assessment and repayment obligation transfers to new owner
- Like any other municipal assessment, payments don't accelerate in case of default

The New Jersey PACE (NJPACE) Program

New Jersey PACE, a program of **Possible Planet**, a 501c3 NJ nonprofit, acts as program administrator for municipalities and reimburses municipalities for costs incurred in placing assessments on owners' properties. We assist municipalities, property owners, contractors and investors by processing each PACE project from application to closing to final approval.

While our services are customized to the needs of each community, we use best practices from programs in other states, including standardized forms and procedures designed to work across NJ's many municipalities; this helps streamline the process for owners who want to use PACE financing in several municipalities. There is no cost to the municipality or to the taxpayer.

Learn more at **NewJerseyPACE.org** or call us today:

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New Jersey PACE Program: Job Growth And Economic Development through Game-Changing Clean Energy Financing

MUNICIPALITIES

Municipalities can help businesses save money on energy while creating local jobs

Energy is often a business's single biggest cost, after labor. Now, NJ municipalities can retain businesses and attract new ratables by helping property owners cut their energy bills by an average of 30%.

PACE stands for "Property Assessed Clean Energy," an innovative mechanism for financing energy efficiency and renewable energy improvements. Up to now, these projects required upfront capital and long payback periods. With PACE, clean energy projects are 100% financed with no upfront costs, and without adding to the property owner's balance-sheet liability. Projects are designed to be cash-flow positive, saving money from the start. Amending legislation, to remove significant obstacles to practical implementation, is expected to be passed in 2018.

Over 30 states have passed similar PACE legislation. More than $500 million in Commercial PACE financing has been completed and billions of dollars in clean energy upgrades are still needed. And since energy projects require on-site implementation, economic development and job creation are natural outcomes.

How does PACE financing work?

The municipal tax mechanism is the key to accessing the benefits of PACE.

A commercial property owner asks the municipality to place a voluntary "Clean Energy Special Assessment" on their property, and pays it off on their tax bill for up to 30 years. The repayment obligation transfers automatically to the next owner if the property is sold. Payment is tied to the property tax mechanism, so that low cost capital from private investors can be obtained by most businesses based on the value of the property.

NJPACE administers PACE in Municipalities

A NJ 501c3 nonprofit, **New Jersey PACE (NJPACE),** administers a state-wide open-market PACE program, assisting municipalities, property owners, private investors and contractors in facilitating PACE funding transactions. Standardized forms and procedures, based on what is working in other states and customized for New Jersey, help owners who expect to take advantage of PACE financing in multiple municipalities.

A municipality passes an Ordinance to establish a PACE program, and appoints **NJPACE** as an administrator of the program. The municipality's reasonable project-related costs can be reimbursable and included in the financing of projects, so there is no cost to taxpayers.

Benefits to Municipalities

- Municipalities retain and attract businesses that want capital improvements without the out-of-pocket upfront expense.
- Communities get an economic development tool, creating local jobs and local investments.
- Green teams that have made commitments to sustainability, including reducing energy use and pollution, have a new tool to achieve these goals.

Coupled with downtown revitalization programs (e.g., Main Street), **NJPACE** can provide the capital to upgrade retail stores, multi-use and rental properties (5 units or more), and church and other nonprofit buildings, as well as financing to help restore blighted commercial and industrial areas and "white elephant" office parks.

Our internal estimates suggest that there is more than $130 billion dollars worth of clean energy investment that could be made to New Jersey commercial real estate through PACE over the next decades.

What types of upgrades are eligible?

- High efficiency lighting
- Heating ventilation air conditioning (HVAC)
- High efficiency chillers, boilers, furnaces, water heating systems
- Building enclosure/envelope improvements
- Building automation (energy management)
- Renewable energy systems (solar, CHP, wind, etc.)

See **NewJerseyPACE.org** for a complete list.

What does PACE cost the municipality?

PACE utilizes the municipalities' existing method of collecting tax payments, so added costs are minimal. The municipality's costs for processing the assessments can be reimbursed through fees included in the financing for each project.

Does NJPACE assist municipalities in marketing the program to owners?

NJPACE works with municipalities that have opted-in to the **NJPACE** program to market the program to building owners. **NJPACE** provides municipalities with marketing material and assists in getting the word out through local, regional and state entities, business and professional associations as well as public relations.

What are the risks to the municipality?

A municipality is responsible for collecting PACE assessments, but is not responsible for guaranteeing their collection. The municipality must ensure that PACE assessments are separately accounted for and cannot be utilized for any other purposes. As owners make payments, the municipality passes on these payments to the Trustees of the funding source of PACE-assessed properties. If a building owner is deficient or delinquent on their PACE assessment, the municipality is not responsible for any deficiency or delinquency. In the case of a non-payment, the funding source for a PACE assessment can take assignment of the lien and begin collection processes. **NJPACE** will be creating draft legal documents once amending legislation is available in NJ.

Can municipalities use PACE assessments?

PACE funds cannot be commingled with municipality funds. The municipality will place the PACE assessment in a separate account pursuant to the legal agreement executed with each municipality, and the municipality has a fixed window by which they must remit the funds to the funding source for a particular PACE assessment.

What happens in the event of non-payment, or a bankruptcy?

Municipal liens related to real property have first priority in allocating recovery money, followed by PACE payments *in arrears*. The special assessment only becomes a lien in the event of non-payment and, like any other assessment, payments are non-accelerating in the case of a default. The municipality is not required to pay any delinquent PACE assessments, but is responsible for remitting those amounts that are recovered when the building is sold or passes through a tax sale.

How does a municipality opt in to NJPACE?

Under the law, the municipality passes an Ordinance establishing a PACE program which allows it to create a class of "Clean Energy Special Assessments" that finance public benefit projects on private property. The municipality signs a Participation Agreement, authorizing **NJPACE** to act as an administrator that approves and processes projects.

Property owners arrange their own financing through lenders approved by NJPACE. The municipality may issue bonds, or apply to a County Improvement Authority for bonds to finance the program.

Contact us to discuss how your municipality can take advantage of PACE.

NJPACE

Learn more at **NewJerseyPACE.org** or call us today:

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Attachment C:

Commercial PACE in New Jersey
A Brief Policy Summary

Revised Tuesday, May 22, 2018

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

1. Legislative History and Background
2. The Opportunity in NJ
3. Experience in Other States
4. Best Practices: Open Programs & Private Competition
5. New Jersey PACE Recommendations

NOTE: This summary has been prepared by the executive team of New Jersey PACE, a dba of Possible Planet / the Center for Regenerative Community Solutions, a NJ 501(c)(3) Nonprofit Corporation established in 2013 to support the development of Property Assessed Clean Energy ("PACE") for commercial, industrial, agricultural, multifamily, and nonprofit / institutional properties, generally known as Commercial PACE (C-PACE). PACE utilizes the municipal Special Assessment mechanism to secure public and/or private investment in energy efficiency, renewables, and other improvements to private property at the request of individual property owners. (Note: This brief does not address Residential PACE (R-PACE) except in passing, as the key legislative sponsors have indicated they wish to postpone introduction of R-PACE to a later date.)

Current proposed legislation:
A1902, as pre-filed for the 2018 Session by Assemblyman Raj Mukherji and others
S1611, introduced February 5, 2018, by Senators Bob Smith and Christopher ("Kip") Bateman

1. Legislative History and Background

PACE legislation was originally proposed by then-Assembly Deputy Speaker (now BPU Commissioner) Upendra Chivukula, and Senator Bob Smith, chair of the Senate Environment and Energy Committee, approved by the legislature on 2011, and signed into law after concessions were made due to a conditional veto by Gov. Chris Christie, and incorporated into the NJ Statutes as P.L. 2011, c.187. The statute allows municipalities to establish PACE programs *after prior approval* by the Division of Local Government Services (DLGS) of the Department of Community Affairs (DCA), utilizing municipal and/or county improvement authority bonds. Provisions authorizing the use of up to $200 million in NJEDA funding were stricken from the bill by the conditional veto.

Upon review and consultation with DLGS and others it was determined that the legislation was unworkable fpr several reasons: (a) the DLGS indicated it would not issue any approvals, (b) the municipal and county bonding mechanism was considered politically and/or practically infeasible, and (c) municipal attorneys were looking for greater protection from liability for the municipalities.

Two subsequent bills to amend the statute by the principal sponsor, Sen. Bob Smith, received strong bi-partisan support but were (a) pocket vetoed, and (b) conditionally vetoed in a form the Senator deemed unacceptable. A third version of the amending legislation was to have been submitted to Gov. Christie in early January of 2018, but did not make it through the legislative process in time.

The current Senate and Assembly versions of the bill are identical to the proposed 2017 legislation. They reflect important industry-agreed provisions, including:

- expand the definition of PACE-eligible improvements to include resiliency measures
- exclude single-family (or up to four-unit) residential
- include a requirement for existing mortgage lender consent
- several consumer lending disclosure provisions
- exclusion of any local government liability
- permit direct private financing as well as county improvement authority bonds

2. The Opportunity in New Jersey

In the fall of 2017 we commissioned a market study for New Jersey through the Catchafire program by a volunteer consultant in Charlottesville, VA. Using the first five years of the PACE program in Connecticut as a guide, he analyzed the market and the likely trajectory of C-PACE development in New Jersey.

Under New Jersey's definition of commercial properties, the following are considered "eligible property types": Farm and Farm Qualified; Commercial; Industrial; Apartment/Cooperative; Exempt Charitable (e.g. churches, and other non-profits).

The estimated number of PACE-eligible properties in NJ is 225,086. The average project size (estimated, based on data provided by CT C-PACE) is $576,230. That's a total of $129.7 billion (225,086 x $576,230 = $129,701,305,780).

Based on the volume of deals over the past several years in Connecticut, we estimate that more than $100 million in PACE financing could be invested each year in clean energy improvements in New Jersey.

With support from the Governor and the First Lady, from public-private collaborations including Sustainable Jersey, the League of Municipalities, from professional associations and other entities, New Jersey could show the rest of the country how to optimize the economic, social and environmental benefits of PACE.

3. Experience in Other States

Legislative authorization for PACE is currently in place in 33 states and the District of Columbia, but operating PACE programs currently exist in only 20 states and the District. Most of these are commercial only, with Residential PACE programs operating in only California, Missouri and Florida. A total of 37 commercial PACE programs are currently in operation, with an additional 12 (including New Jersey PACE) listed as "in development."

To date, approximately 1,200 C-PACE projects have been completed, representing a total investment of over $580 million, and creating an estimated 8700 jobs. (*Source*: PACENation.us, the national nonprofit stakeholder organization.)

The majority of C-PACE projects are for Energy Efficiency (56%), with Renewable Energy 26%, and 18% being "mixed" projects combining both EE and RE. A handful of projects have also been done for resiliency improvements, including seismic protection in California and hurricane-resistant construction in Florida.

4. Best Practices: Open Programs & Private Competition

A. Administration

The PACE statute in every state sets forth the key requirements of PACE programs, and permits towns and counties to adopt and administer their own PACE programs as specified by the statute. PACE programs are typically administered by an outside, private-sector Administrator that follows the regulations set forth in the Municipal Ordinance. Several have quasi-governmental organizations overseeing PACE at county or municipality levels, depending on the level at which taxes are collected. A discussion of program design options can be found at http://pacenation.us/start-a-pace-program/#programdesign.

B. State Guidance

The current legislation does not include State oversight for PACE, beyond having the Division of Local Government Services (DLGS) report on progress after 5 years. No State regulatory involvement means that taxpayers pay nothing for PACE, which may be seen as a benefit to this Administration. PACE is totally voluntary, and property owners that take advantage of PACE pay for all of the costs of the program. No State oversight also reduces the ramp-up time to launch PACE in a market that has been waiting for the program for 6 years. Because the commercial PACE industry is composed of private investors lending private money to private property owners, we believe that PACE can operate efficiently and effectively as a free market program, as designed in the current bill (S1611/A1902).

However, if the State feels it needs to provide guidance through a state-wide entity, this function ought to be lodged with an entity that understands economic development and financing, rather than one focused exclusively on municipal control or subsidizing energy programs. If state guidance for PACE is required, we believe that the New Jersey Economic Development Authority (EDA) is the appropriate agency. This was the agency first envisioned in the original legislation, P.L. 2011, ch. 187, prior to Christie's conditional veto, which eliminated involvement of the EDA.

DLGS has a limited role in the existing legislation, and we do not believe that it is the appropriate entity to provide guidance for PACE. We understand, however, that Senator Smith reached out to Sheila Oliver, Commissioner of Department of Community Affairs (DCA), recently, for input on the current bill. Over the past 6 years, two consecutive Directors of the DLGS have told NJPACE that (a) they do not have the staffing, (b) they do not have the knowledge/competencies to oversee PACE, and (c) to write the rules and regulations for PACE may take months if not years. While PACE uses the municipal property tax mechanism to collect payments from participating commercial property owners, the proposed PACE amendment is clear that there is to be no liability to municipal governments for any unpaid property owner PACE payments, nor can there be comingling of municipal budgets with monies collected for PACE. Since PACE will not impact the financial health of municipalities, we do not believe DLGS is the right organization to provide state guidance.

While we believe that the private sector can implement PACE effectively without state oversight, it may be helpful to have guidance from the state that would create uniform standards and best practices for municipalities to adopt. Uniform standards and practices would benefit property owners, lenders and energy services contractors, and provide direction to municipalities.

Among the 20 states where PACE is currently operating, there is a wide array of approaches that states have taken. They range from Connecticut, which created and administered its own program, paying staff and providing project financing through its Green Bank, to states which take no role other than requiring tax-collecting jurisdictions to pass an ordinance to allow PACE. We believe that the closest example to what New Jersey may want comes from Virginia. In Virginia, the State Department of Mines, Minerals and Energy is required by the statute to design uniform standards with the input of several stakeholders and to disseminate those standards. Whether local governments adopt the standards is voluntary and the state has no further oversite. Virginia's DMME has released the following https://www.dmme.virginia.gov/de/LinkDocuments/Final_C-PACE_underwriting_guidelines_20151201.pdf. A local non-profit has designed a program along these guidelines which VA counties will adopt.

We are happy to provide guidance about other state programs, or consult PACENation (PACENation.us), the national association of the PACE industry.

C. No Ratepayer or Taxpayer Monies

The Administration of PACE Programs and the funding of PACE projects do not cost a municipality or a county any money. The third-party Administrator collects processing fees from the projects, and the projects (which are credit-worthy and cost-saving) require no public assistance – from any source. In a sense, PACE is a non-governmental program facilitated by the government.

D. Fees, Interest Rates and other Costs

The property owners pay all fees. Municipalities in some states have charged the projects (i.e., property owners) for the services of the municipality in the setting up and collection of payments. Such fees are added into the total cost of the project. Administrators try to keep these fees to a minimum, and to have the fees reflect actual work performed.

The amount and type of fees that property owners are charged can impact whether or not the project proceeds, and will impact the volume of PACE deals. There are fees from the Administrator, the lender, the project originator (if one is used to initiate and support the property owner throughout the process), attorneys, appraisal, audit, the loan servicer, etc.

PACE interest rates, offered by specialized lenders in the industry, have been in the 6-7% range. This rate is lower than mezzanine financing for new construction. For retrofits, bank financing is typically not available for more than 5-10 years, versus up to 30 years under PACE, depending on the average useful life of the measures. Interest rates are expected to decline as demand and new entrants looking to finance deals in this asset class increase; however, rates have not yet begun to decline.

PACE programs do not require ongoing measurement and verification (M&V) of energy use and performance, which would impose an additional cost on property owners. Though we encourage the use of operational monitoring because it can flag issues and ultimately reduce the cost of ownership of clean energy systems, such a requirement may reduce the number of PACE projects, as property owners draw the line on the number and size of additional costs of using PACE.

E. Municipal vs. County Programs

In New Jersey, taxes are collected at the municipal level, and only municipalities can establish a PACE program. Counties, or more precisely County Improvement Authorities, can create PACE *financing* programs by issuing bonds, and offer these programs to municipalities, but they cannot *require* municipalities to establish PACE programs or oblige them to use Improvement Authority bonds as a means of financing them.

F. Fair and Open Market Competition

The experience in other states indicates that competition is a pre-requisite for a fair, market-driven PACE industry. The industry is well-aware that where the money is made in PACE is in the financing of deals -- and not in the administration function. Therefore, competition in interest rates is where the focus needs to be, to benefit property owners and the industry as a whole.

The best way to obtain a robust and competitive program is to have PACE administered in a jurisdiction by an "open-market" Administrator. Open-market Administrators typically do not provide financing. Instead, approved lenders are listed, from which property owners (or the originator/contractor for the project) can obtain financing for the project, getting multiple quotes on terms and interest rates.

There are very few "open-market" PACE Administrators, since the function of an open-market Administrator is to process deals as cost-effectively as possible, minimizing administrative fees.

In contrast to open market Administrators are Administrators that are looking to "capture" a municipality with a requirement that it remain their exclusive territory. These Administrators seek to become a monopoly in the areas they service, and provide only one interest rate to a property owner. In the early days of C-PACE, in Florida, administrators took each other to court and held up PACE for several years. At issue was who claimed the exclusive right to provide PACE in a jurisdiction, such that there would be only one option for getting projects financed and only one capital provider for each jurisdiction.

We see the antidote to captive markets as having an open-market Administrator that processes deals that are being financed by a variety of competitive lending institutions.

The current bill has also been crafted to *allow* towns to appoint multiple administrators, but towns are not required to do so.

While interest rate competition among lenders will create the most robust PACE market for New Jersey, it is not necessarily true that there will be vigorous competition for the role of open-market Administrator. Open market Administrators have very small fees/margins, where the set-up costs are high, and where breakeven may take years due to the high number of municipalities in New Jersey (as compared with other states, where PACE is handled at the county level, where taxes are collected).

Our goal as a nonprofit advocate and community services provider has been to make an open-market program available to all interested municipalities in order to minimize service duplication while maximizing competition amongst capital providers.

5. New Jersey PACE Recommendations

In addition to above-mentioned Best Practices, we recommend that PACE legislation be "fast-tracked" for the following reasons:

a. **It's ready to go, having been worked on over the past two years;**
b. **It's an easy and early win for the Administration to show its support for clean energy;**
c. **It does not have any implications (other than positive ones) for other clean energy policies; and**
d. **It's important to start the ball rolling, as both the municipalities and the industry are likely to require some "ramp-up" time before the policy can begin to show results.**
e. **If state guidance is required, we prefer to see an agency that understands the economic and financing aspects, and which will provide statewide standards and best practices.**

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NJPACE is an initiative of Possible Planet, our 501(c)(3) umbrella nonprofit

Attachment D:

PROPOSAL FOR AN INDUSTRY-OWNED

OPEN MARKET PACE

ADMINISTRATIVE PLATFORM

FOR NEW JERSEY[14]

Updated: Saturday, September 22, 2018

Proposal Summary

This brief outline describes a unique "industry-owned" open-market administrative platform. The platform would be operated by and for the principal stakeholders in the PACE ecosystem — property owners, capital providers, municipalities, developers, and energy services contractors. A management committee of stakeholder representatives would oversee the development, operation, and continuous improvement of the platform.

The main benefit of this approach is that it allows the key industry players to develop, manage, and oversee the administration of PACE on a statewide basis in a way that is fair, neutral, and self-policing. This is in contrast to both government-controlled and privately-operated administrative programs, which either have costly overhead or else struggle to survive without compromising their impartiality by also originating PACE projects.

This proposal is being put forward by **New Jersey PACE**, a 501(c)(3) nonprofit that has been the principal advocate for PACE in New Jersey since the passage of the original law in 2011. The mission of NJPACE is to facilitate the implementation of PACE and to assist communities in leveraging PACE for local economic development. **NJPACE** is prepared to assist in the development of the proposed platform, and would be a key player and eventual user of "**Open Market PACE**," but would not be the platform Administrator.

Open Market PACE, the proposed consortium platform, would be the "Program Administrator," and municipalities would be encouraged to "join" or "subscribe to" the platform. They could then be assured that all market players would have open access to the program, and all approved projects would be eligible and fully and confidentially vetted by a processor that is conflict-free and hired by the membership platform.

[14] This program may be applicable to other states. The goal of **Open Market PACE** is to create an industry-owned administrative platform that offers standard procedures based on best practices and makes this available to every municipality in the state. If the model is successful the industry participants may then wish to replicate the platform and adapt it for other states to maximize the social and economic impact of PACE in every community.

Background

Property Assessed Clean Energy (PACE) allows property owners to make energy and resiliency improvements with 100%, long-term, off-balance-sheet financing. This financing is secured by a voluntary Special Assessment collected by the municipality. Thirty-six states and the District of Columbia have laws enabling PACE, and a handful of these states have active and growing programs; but in many states implementation is lagging for a number of reasons, including legislative obstacles and a lack of streamlined, cost-efficient, and independent administration.

This has historically been the case in New Jersey: the existing PACE statute contains unworkable provisions which prevented the creation of local PACE programs, and fails to incorporate many important conditions that create a robust marketplace for clean energy and resiliency financing. Amending legislation is likely to be approved by the new Murphy Administration this year, which will open up a major new market for financing renewables, efficiency, and resiliency in the Northeast. The state has an aging industrial and commercial infrastructure that offers an optimal opportunity for self-renewal, with a wide-open market for sustainable and profitable “clean and green” development.

And a major infusion of new investment is an opportunity for the revitalization, regeneration, and reinvention of sustainable local communities. The ultimate goal of PACE — and of similar structured finance options[15] — is to finance the long-term transition to clean energy, climate-adapted buildings, and low- to no-emissions from buildings. The expectation is that New Jersey will approve Commercial PACE in the fourth quarter of 2018.

Property Assessed Clean Energy (PACE) can be a highly successful program if it is administered effectively at the local level. Since it is based on state law, and since each state is somewhat different in its legal and economic environments, PACE program administration needs to be designed to meet the needs of the various PACE stakeholders within the framework of the specific state’s legislation. The objective of this proposal is to develop an optimal program for maximizing the economic, social, and environmental impact of PACE in the Garden State.

[15] As a 501(c)(3) nonprofit, NJPACE has developed two new innovative structured finance products designed to implement similar features to PACE, which are intended to “jumpstart” clean energy projects in localities where PACE is not available. For further information, see www.RegenerativeFinancing.org.

Types of PACE Program Administrators

Several types of administrators have been identified by the C-PACE Working Group at the US Department of Energy:

1. Public or Quasi-Public
   Allows greatest control and flexibility in program design, but places larger administrative burden on sponsor and increases risk of "lost sunk costs" should participation not meet expectations
2. Private
   May be paid for their administration services only (fee for service model) or may provide both administrative services and the exclusive right to finance PACE improvements (one stop shop model). A one stop shop administrator often offers PACE programs at no cost to program sponsors in exchange for the exclusive right to fund assessments; potential benefit should be weighed against the risks of reducing competition among financiers to deliver attractive capital to participants

The DOE also identifies three basic models for funding PACE assessments with private capital:

1. Public administrator acts as warehousing entity
   Requires program administrator to hold assessments until sufficient volume to support a re- sale to private investors; exposes program administrators to the risk that insufficient volume materializes or a private investor cannot be found.
2. Private administrator funds assessments directly
   Allows for an immediate infusion of private capital; may have higher upfront costs that are passed through to participants, as the private administrator is taking on additional risk by holding assessments.
3. Open market model
   Brings private capital to bear immediately; open market models may introduce administrative complexities as multiple lenders interact directly with program participants.[16]

This proposal takes the third category to a new and more transparent level, as it specifically proposes that an open-market administrative platform *owned by the industry* can be created that serves all parties fairly and minimizes the costs to the property owner. It also aims to handle the "administrative complexities" in having multiple lenders interact directly with program participants by providing separate "channels" for capital providers and other stakeholders within the administrative platform framework. Ideally, the platform, acting as or in close relationship with the municipally-chosen PACE Administrator ("PA"), should provide for a largely automated process, with standardized eligibility requirements requiring verifiable attestation by lenders, property owners, contractors, and licensed professionals that is fully accessible to the taxing authority.

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[16] *Source:* Pace Comparative Analysis Webinar 2-26-15_r1.

Development, Operation, and Management

Several organizational models are possible: the platform could be operated by an industry association, or it could be a formal cooperative, partnership, LLC, or corporation. The eventual organizational structure is to be decided by the members. The point at the outset is to form a core group of industry players, with representatives of key stakeholder groups, to develop the initial design of the platform and pay the startup costs.

NJPACE proposes a model in which the administrative platform is ultimately owned and operated by a consortium of members, including capital providers and other stakeholders, and in which the policies and functions are co-managed in the fairest and most efficient way.

NJPACE wants to be part of creating this, and to be users of the platform, but we do not see it "ours." This is why it would designated as "**Open Market PACE**" or "**the New Jersey Open Market PACE platform**."

Since we currently don't have grant funding to establish the platform, the development phase will rely on shared investments by the members of the core group, who may be able to recover these upfront costs either through discounted fees or as a direct return of capital, with interest, once the platform is established. NJPACE will initially develop and market the platform, engage an independent processor, and then turn the platform over to an independent ownership entity of whatever form the sponsoring members decide.

As noted by the C-PACE Alliance:

"The essential PA functions are to:

1. **Ensure the local program rules and processes are predictable, transparent and efficient**. This function typically requires the PA to:
   a) Set the minimum qualifications for all parties in the transaction;
   b) Identify the project-level information to be submitted to the PA;
   c) Provide templates for the tax assessment and related documents;
   d) Describe the process for filing the assessment lien;
   e) Act as the liaison for capital providers, local government and the tax assessor empowered to collect the C-PACE assessments. Alternatively, allow the Capital Provider to bill and collect from the Property Owner directly.
2. **Certify projects that are eligible.** This task requires the PA to review documentation and determine if a project demonstrates compliance with the ordinance and program rules."[17]

[17] *Source: C-PACE Path to Implementation, May 2018*

Benefits of the Industry-Owned Open Market PACE Administration

Industry stakeholders should consider the following:

1. The proposed administrative platform serves all marketplace actors fairly and equally
2. Pricing and conditions for using the platform are established by stakeholder committees (of which there may be several covering different sectors, e.g., municipalities, contractors, etc.)
3. Continuous improvement of the platform will reflect the needs of the industry as a whole, not of an individual player
4. No conflict of interest on the part of the platform administrator
5. Possible for initial investors to recover the costs of their investment in the platform
6. Common interest in making the platform standardized, maximized, and successful on a state-wide basis
7. OMP may eventually establish standards for the industry and be extended to other states or jurisdictions where neutral, cost-effective platforms are not currently available.

Immediate Action Steps

New Jersey PACE will circulate this proposal and some other materials to key industry players and stakeholders for feedback. We have already registered **OpenMarketPACE.co**m and **OpenMarketPACE.org** as domains to be used by the new platform and will develop those to explain the model. Based on the feedback received, **NJPACE** will then modify and update the proposal in order to invite stakeholders to become "members" of the association, consortium, or cooperative that will eventually own and operate the platform.

In the meantime our focus remains that of getting the amending legislation (S1611/A1902) passed and signed into law, as model legal documents cannot be finalized until all the details of the law are known. Our web site, NewJerseyPACE.org, is being updated to solicit industry and public support for getting the legislation passed and signed by the Governor.[18] In addition, we will continue our outreach to municipalities and other stakeholders to create a foundation for rapidly expanding program uptake once the final legislative framework is in place.

The following section provides a more detailed breakdown of the key operational elements of the plan to create the Open Market PACE administrative platform.

[18] See http://www.newjerseypace.org/you-can-help-make-pace-happen-in-new-jersey/ for a draft landing page.

Key Operational Elements

Proposal:
NJPACE will work with key industry stakeholders to develop an independent Open Market PACE administrative platform, and seek to have it broadly accepted by local governments in New Jersey.

Our Primary Goal as NJPACE:
Our role as a 501(c)(3) clean energy nonprofit is to maximize the adoption and impact of Commercial PACE throughout the state, engaging all stakeholders in creating a fair and open marketplace that serves the needs of municipalities, property owners, capital providers, and energy services contractors, and provides the economic, ecological, and resiliency benefits contemplated in the current PACE legislation.

Our vision *is that* ***New Jersey PACE*** *enables NJ and its communities to thrive, economically, socially and environmentally, by providing an opportunity to upgrade all commercial (and industrial, agricultural, multifamily, and institutional) properties to the energy standards of tomorrow's 100% renewable future.*

Our mission (what we do every day): We help stakeholders accomplish their objectives through PACE, including: profits, savings, jobs, economic development, lowered carbon footprint, community economic empowerment and a more livable, resilient and sustainable built environment.

Our strategy is to create awareness and educate stakeholders as to their options with regard to PACE — how they can forward their own organization's mission and goals — whether that be for-profit or not for profit. Our goal here is to help them see what may be possible from PACE for them and their constituents. We will point out what the opportunities and resources are, and then help to provide them with an industry-owned platform on which to take action.

Our proposed structure for the administrative platform. We will convene the key stakeholders to discuss optimal organizational structures, including nonprofit associations and for-profit cooperatives. This group will subcontract the administration of PACE (and potentially other functions) in NJ to a non-conflicted, experienced contractor.

Our objectives as New Jersey PACE are really two-fold:
1. It's to engage the key stakeholders to design and implement a neutral, transparent, secure, and conflict-free administrative platform for the state.
2. It's then to make this available in every municipality across the state.

We need to raise money to accomplish these goals. We anticipate that we need at least $200,000 to accomplish these two objective over the first year (budgets and projections to follow). Sources of funds may include: (a) capital providers, (b) business/corporate sponsors, (c) membership fees, (d) grants and donations, (e) loans. For each of our key stakeholders we need a clear and distinct message, e.g.

> **For Capital Providers:** "We're building an independent, industry-owned, administrative platform, Open Market PACE, that provides the infrastructure needed to make Commercial PACE work in New Jersey. We want everyone to contribute to the development and operation of the platform, and to have an ownership stake in it, so that it becomes the de facto single administrator for PACE in New Jersey. The platform will be fair, secure, conflict-free, and efficient, and it will serve everyone in the PACE ecosystem. "

> **For Corporate Sponsors**: "This is an opportunity to make a difference in your local community…."

For Business Sponsors (e.g., engineering firms, solar companies, etc.): "This is going to facilitate / enable your business, and give you better financing tools to make projects happen."

For Municipalities: "Our goal is to create an independent open market platform that will enable commercial property owners to take advantage of cost-competitive PACE financing to make important energy and resiliency improvements, creating jobs and economic development in the community, and meeting environmental and emissions-reductions goals."

Our Proposed Operational Strategy

New Jersey PACE will establish a separate initiative, **Open Market PACE**, *with an initial core of committed stakeholders* willing to contribute to raising the financing, to create the platform and get it accepted by municipalities across the state. From a municipal standpoint, **OMP** (perhaps initially created as a DBA of **NJPACE**), will be the officially designated "Administrator." **OMP** will, however, subcontract the actual processing of PACE projects to a separate processor, ensuring that is no disclosure of confidential information or conflict of interest. Once the **OMP** platform is established, and **NJPACE** has been compensated for getting it established, **NJPACE** will (a) turn **OMP** over to a separate stakeholder cooperative or nonprofit organization (while remaining a member), and (b) focus on financing clean energy and resiliency projects, especially those in underserved markets, that are brought to us. This financing may include not only PACE but also our alternative structured finance models.[19] **NJPACE** will negotiate financing and fees with interested capital provider partners of our choosing, and process these deals through the **OMP** platform just like any other member of the **OMP** governance group.

What We Don't Plan to Do

We will incubate Open Market PACE, but don't plan to create a separate ownership entity until the stakeholder group is ready to do so. NJPACE will not *seek to originate* projects while we are building the administrative platform—but we *will* seek to finance those projects that come directly to us.

"Origination" is used in several ways in the industry, and is recognized as creating a conflict of interest if the originator is also doing its own administrative processing. This is not what we're proposing. We distinguish "origination" from "financing"—by which in our case we really mean "arranging financing," whether from national capital providers or local banks, since at this point we do not have our own sources of funds, for projects that are submitted to us. Since we are not doing the administrative processing of our own or anyone else's deals, we don't believe this creates a conflict.

We need your help to make this a reality. We're asking you to join us in creating this new form of administrative platform, that serves all stakeholders in a fair and impartial way. We cannot do this alone, not if it's going to win out in the marketplace and prove to be a better model for maximizing the impact of Commercial PACE in New Jersey.

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[19] See www.RegenerativeFinancing.org for details.