

Wisconsin PACE Commission Overview

What is Property Assessed Clean Energy (PACE)?

PACE, or property assessed clean energy, is an innovative program that enables property owners to obtain low-cost, long-term loans for energy-efficiency, renewable energy and water conservation improvements. PACE loans help property owners overcome financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties or original construction in new buildings. Improvements financed using PACE can generate positive cash flow upon completion with no up-front, out-of-pocket cost to property owners. While PACE can be used for residential buildings, the Wisconsin PACE Commission will offer a PACE program focused on commercial buildings (which includes office, industrial and multi-family housing with 5 or more units).

What is the legal authority for PACE in the State of Wisconsin?

PACE financings are authorized in the State of Wisconsin pursuant to Section 66.0627(8), (the “PACE Statute”). The PACE Statute enables “political subdivisions” (counties, cities, towns and villages) to impose a special charge on real property to secure loans made for energy efficiency, water conservation and renewable energy improvements.

How do local governments establish a PACE program?

A political subdivision must adopt a local ordinance authorizing the use of special charges to secure PACE financings and must create a program structure for the use of PACE special charges to ensure that PACE financings made in its jurisdiction are consistent with the PACE Statute.

What is the Wisconsin PACE Commission Joint Powers Agreement?

For an individual unit of government, creating a PACE program from the ground up can be time consuming and resource-intensive. Fortunately, local governments have available a more efficient option to collectively administer a single statewide PACE program in a more cost effective manner. Wisconsin counties and municipalities have the option to enter into a joint exercise of powers agreement under Wisconsin Statute § 66.0301 (the “JPA”), by which they agree to form a Wisconsin PACE Commission (the “PACE Commission”). County members agree to adopt a Model PACE Ordinance (discussed below), and to delegate to the PACE Commission the ability to impose PACE special charges according to a single, uniform statewide PACE program in the County members’ jurisdiction. Municipal members (cities, villages, and towns) join the PACE Commission, participate in its governance, and agree to support the uniform statewide PACE program.

How does the Model PACE Ordinance work?

County members agree to adopt a Model PACE Ordinance as a condition of joining the PACE Commission. Among other powers, this ordinance authorizes the County to impose a PACE special

charge, collect payments for the special charge in installments, place those installments on the tax roll, and delegate that authority to the PACE Commission.

Why does the Model Ordinance provide that the County is responsible for administering PACE loans?

While the Model Ordinance does appear to place this responsibility on the County, there is no intention for the County to be required to do so. In this regard, the wording of the Model Ordinance is somewhat of a legal formality. A political subdivision cannot delegate rights or powers to a joint powers commission that the political subdivision itself does not have. The authority to assess special charges and administer PACE loans under the PACE statute is first created by the County for itself (by adopting the Model Ordinance) and then delegated to the PACE Commission.

What powers are given to the Wisconsin PACE Commission?

Participating Counties and Municipalities will delegate to the PACE Commission the power to administer a PACE program in their jurisdictions, which will include creating PACE program guidelines, PACE Project qualification and general program oversight. County Members will delegate the additional powers to impose special charges as part of PACE Projects and collect the installments for the PACE Project loans. The statewide PACE program is then administered by a third party, Wisconsin nonprofit organization, responsible for handling day-to-day PACE financing application reviews and approvals, as well as payment collections on behalf of the PACE Commission.

**Overview of a County Member’s Responsibilities
as Part of the Wisconsin PACE Commission**

Can a County impose a PACE Special Charge on real property?

Yes, see above: *What is the legal authority for PACE in the State of Wisconsin?*

Who is the PACE Lender?

The PACE Statute authorizes two sources for financing PACE loans – third-party financing (including banks, other private lenders or affiliates of the PACE borrower) and public financing by a political subdivision. There is private capital available for PACE Loans and it is anticipated that this will be the predominant source of financing. Local governments retain the option to make available public funds to fund PACE Loans for qualified PACE Projects, though this will not be a requirement for the Wisconsin PACE Commission.

Once a PACE Loan is closed who imposes the PACE Special Charge?

The PACE Program Administrator will approve PACE transactions pursuant to the Program Guidelines, which guidelines will be subject to approval by the Wisconsin PACE Commission board of directors. The Program Administrator will then record a Supplemental Loan Agreement with the register of deeds in which the subject real property sits. The Supplemental Loan Agreement is a contract between the PACE

Commission, the PACE Lender and the Borrower that memorializes for the public record that there is a PACE Loan and Special Charge outstanding against the Borrower's real property, among other terms.

How is the annual installment of the PACE Special Charge calculated?

The annual installment of a PACE Loan is equal to the annual repayment obligation under the terms of the PACE Loan, which amount may include interest and other fees pursuant to a Loan Agreement between the PACE Lender and Borrower. The PACE Loan may have a loan term up to the useful life of the equipment and improvements being financed.

Where is the annual installment for the PACE Loan collected?

The PACE Statute provides for a "direct billing" system in which the PACE Lender may collect payments for the PACE Loan directly from the Borrower without involving the political subdivision that imposed the Special Charge. Following the close of a PACE Loan, the PACE Lender would certify to the Program Administrator the annual PACE installments that are due. The Program Administrator then works with a Servicer to bill for and collect the annual installment payments from the PACE Borrower. Upon each installment payment, the Program Administrator's Servicer would certify that payments have been made and remit the installment payments collected directly to the PACE Lender.

What happens if the PACE special charge is delinquent?

The PACE Statute establishes that a delinquent PACE Special Charge becomes a lien on the property, with same priority as a special assessment. Upon a default, the Servicer and PACE Lender would certify the amount of the delinquency to the Program Administrator, who would then work with the appropriate County and municipality to place the amount of the PACE Loan delinquency on the next available tax roll for collection pursuant to the existing Wisconsin statutory tax collection procedures in Wisconsin Statutes Chapters 74 and 75.

Does the County have to settle the Special Charge with the PACE Lender.

No. To participate in the program, PACE Lenders recognize that neither the Wisconsin PACE Commission nor its Members have an obligation to settle or reimburse PACE Special Charges to PACE Lenders.

Does the County have to settle delinquent PACE Special Charges to the municipality?

No. Since the source of funds for the PACE Loan secured by the Special Charge will be a private third-party, the County will have no basis to settle the PACE Special Charges with the municipality in which the encumbered property is located.

When is a Tax Certificate issued for a delinquent PACE Special Charge?

A Tax Certificate for a delinquent PACE Special Charge is issued at the same time that a Tax Certificate would be issued for any other delinquent property taxes. If there are multiple tax delinquencies that

would be the subject of a Tax Certificate (which would likely be the case in the event of a PACE Special Charge delinquency), all delinquent amounts would be evidenced by the same Tax Certificate. The redemption period for a special charge Tax Certificate is the same two year redemption period for any other Tax Certificate.

What is the County’s responsibility in the case of a mortgage foreclosure?

In many cases, the PACE Loan will be part of a financing package and the property subject to the PACE Special Charge will also be encumbered by a mortgage securing other credit extended by the PACE Lender (or another lender) to the property owner. Failure to pay the PACE Special Charge will almost certainly constitute an event of default under the mortgage and related loan documents entitling the PACE Lender (or other lender) to foreclose the underlying mortgage. In those cases, just as with any private mortgage foreclosure, the County will have no involvement and the tax foreclosure process will not be necessary.

What does the County have to do if the delinquent PACE Special Charge reaches a tax foreclosure?

In the unlikely event that a PACE Special Charge must be foreclosed upon, the following would apply. If after the two year redemption period the Special Charge delinquency evidenced by the Tax Certificate is not paid, then the County would be responsible for instituting foreclosure proceedings on the Tax Certificate, except in the case of a “brownfield” or other concerns with the property leading the County to a good faith determination that it would not be in the County’s best interest to foreclose.

What if the County determines that it will not bring a foreclosure on the property?

If the County does not bring a foreclosure action against the subject property, then the PACE Lender is authorized by the PACE Ordinance to bring a foreclosure on the PACE Special Charge in place of the County. To assume this authority, the PACE Lender must agree to comply with all of the statutory procedures for a tax foreclosure.

Why does the PACE Ordinance favor the In REM tax foreclosure process?

The *in rem* foreclosure procedure is an electable procedure pursuant to Wis. Stat. § 75.521. In addition to uniformity, the PACE Ordinance requires that the County utilize this procedure to foreclose upon a PACE Special Charge because of the statutory presumption Wis. Stat. § 75.521(12) gives to the validity of special charges (as well as all special assessments and taxes) and the liens thereof.

How does the County sell tax delinquent property?

The County follows the procedure for the sale of delinquent real estate as laid out in Wis. Stat. § 75.69

What is the priority of distribution of the proceeds of the sale of the real property from a tax foreclosure sale?

The County follows the procedure for the distribution of proceeds as laid out in Wis. Stat. § 75.36.

Following the County's tax foreclosure sale what happens to the outstanding balance of the PACE Loan?

The PACE Special Charge is foreclosed out. Therefore, the PACE Loan no longer encumbers the real property. The Supplemental Loan Agreement, however, may contain terms which require the County to pay over any surplus proceeds from a foreclosure sale to the PACE Lender, up to the outstanding balance of the PACE Loan.