

Implementation of a City of Austin PACE Program Under HB 1937

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HB 1937

- In May 2009, the Texas Senate passed HB 1937 sponsored by Mike Villarreal (D-San Antonio).
- The bill authorizes municipalities to offer property tax financing for on-site renewable energy and energy efficiency improvements.
- Property owners may borrow money to pay for improvements and repay the borrowed amount through an increased property tax assessment secured by a lien on the property.

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PACE Programs

- Currently, PACE (Property Assessed Clean Energy Programs) bills have been passed in 17 states with programs underway in over 10 cities and counties.
- Benefits of PACE programs:
 - Provides financing without large upfront costs and credit constraints associated with traditional bank loan financing.
 - Loan stays with the property in the event of a sale.
 - Saves energy and reduces CO₂ emissions.
 - Creates jobs.

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City Council Resolution No. 20091022-039

- On October 22, 2009 City Council passed a Resolution directing the City Manager to evaluate the means of implementing a City PACE program.
- A PACE team was assembled to study the issues over a 90-day period.
- On January 21, 2010, Austin Energy provided a response to the Resolution, outlining the legal and financial issues surrounding the implementation of a City program and providing recommendations for the PACE program's ongoing development.

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Legal Issues

- Texas Constitution prohibits government entities from donating or lending public funds to any private person.
- Ability to collect loan proceeds as an assessment on property tax bill.
- Priority and enforceability of statutory lien.

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Legal Issues: Prohibition of Lending Public Funds

- The City may not loan its funds unless the following criteria is met:
 - Predominant public purpose or “public benefit” to the use of the funds.
 - City retains sufficient control over transaction to ensure that the public purpose is accomplished and to protect the public’s investment.
- HB 1937 directs City Council to define public purpose however because the AG must approve the issuance of bonds, it is important to have their concurrence.
- AG’s office is currently reviewing the issue to determine if there is a public benefit associated with PACE programs.

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Legal Issues: Collecting Assessment on Property Tax Bill

- No direct statutory authority for a tax assessor or appraisal district to collect a PACE assessment as it is not a “tax”.
- Texas Tax Code prohibits the inclusion of non ad valorem taxes on the actual property tax bill.

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Legal Issues: Priority and Enforceability of Statutory Lien

- Property lien is the primary enforcement tool for ensuring repayment of PACE loan.
- HB 1937 does not provide that the City's lien on the property would be a priority or senior lien.
- Any lien held by the City on a borrower's property would be subordinate to any existing mortgages or other liens.
- Bond financing based on assessment revenues would likely carry a higher rate of interest due to lack of senior lien status.

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Financing Issues

Prior to the PACE financing model, property owners had several methods of financing improvements:

- Mortgage refinance loans
- Home equity line of credit
- Personal loans
- Credit cards
- Personal savings
- Other resources: utility rebate programs, federal incentives

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Financing Issues

- The PACE program allows a city to issue debt to finance the cost of installing energy efficiency or renewable energy improvements.
- The City has several options for financing a PACE program:
 - Special Assessment Bonds
 - Certificates of Obligation (COs) or Contractual Obligations (KOs)
 - Austin Energy Separate Lien Obligation Revenue Bonds
 - Third-Party Financing
 - DOE EECBG Grant Funds

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Financing Issues

- Opportunities for financing may be limited by several issues:
 - AG's Opinion as to constitutionality of issuing bonds for this purpose
 - Revenue pledge to support the bonds
 - Market appetite for special assessment bonds
 - Requirement for voter approval

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Financing Issues: Special Assessment Bonds

- Proceeds sponsor a defined project.
- Not backed by the full faith and credit of the municipality – carry more risk than general obligation bonds.
- Current market for low investment grade bonds, like special assessment bonds, is extremely limited – may restrict the issue size to a smaller scale.
- Small sizing may result in a private placement financing vehicle – not the competitive or negotiated bond sale the City generally uses.
- Interest rate estimated at 7.5 to 8.5% based upon today's market.
- Bond terms may not extend beyond the life of the improvement.

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Financing Issues: COs or KOs

- Requires a legal opinion from bond counsel to determine whether City can issue CO or KO debt.

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Financing Issues: AE Separate Lien Obligation Revenue Bonds

- Requires a legal opinion from bond counsel to determine whether City can issue bonds to finance a PACE program under the provisions of the existing bond ordinance.

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Financing Issues: Third-Party Financing

- Several cities in other states are contracting with a third-party to provide administrative services and financing for PACE programs.
- May result in a reduced credit risk to the City.
- May create more challenges related to lien enforcement.

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Financing Issues: DOE EECBG Grant Program

- City has submitted an application for \$20.43 million in funding to develop the Austin Climate Protection Retrofit Program (ACPRP).
- As part of ACPRP, EECBG funds will be used to establish and administer a City PACE program over a three-year period.

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PACE Program Recommendations

- Residential and commercial property owners may participate.
- Public schools or governmental entities may not participate due to the lack of enforcement mechanisms needed to secure the assessment.
- Program would be limited to properties within the City limits and AE's service territory.
- Explore “on-bill” or “PACE bill” financing.
- AE plans to continue to offer the majority of its existing energy efficiency and solar programs.

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PACE Program Recommendations

Eligible Improvements may include:

Energy Efficiency:

- HVAC Systems
- Water Heaters
- Cool Roofs
- Attic and Wall Insulation
- Windows and Glass Doors
- Lighting
- Home Sealing
- Pool Pump Equipment

Solar Improvements:

- Solar Electric (PV)
- Solar Thermal (Hot water)

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PACE Program Size and Funding

- Berkeley FIRST 2008 Pilot Program (Solar improvements only): \$1.5 Million for 38 PV projects with an average project cost of \$39,473.
- City of Palm Desert PACE Program Phase 1 and 2: \$7.5 Million for 88 PV and 120 energy efficiency projects with an average project cost of \$36,057.
- Boulder County PACE Program Phase 1: \$6.6 Million for 393 residential projects with an average project cost of \$16,793.

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City PACE Program Size and Funding

A \$96.5 Million PACE program would result in the following over a three year period:

- Energy efficiency and solar energy improvements for an estimated 7,250 residential and commercial units.
- An estimated 129,000 MWh of energy savings.
- An estimated 76,000 metric tons of avoided CO₂ emissions.
- Create or retain over 300 jobs.

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Estimated PACE Assessment

Estimated Assessment for Average 4.3 KW PV System Under a City of Austin PACE Program:

Average Photovoltaic System Cost:	\$23,185
Estimated Financing Rate:	7.0%
Program Administrative Costs (2%):	\$464
Term of Repayment:	20 years
Federal Tax Credit (30%):	\$6,955
Monthly Assessment for Solar Improvements:	\$129/month
Average Monthly Project Energy Savings (\$/month):	\$49/month
Project Monthly Cost for Solar Improvements (less energy savings):	\$80/month

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Next Steps

- Work with the Texas AG's office to issue an AG opinion clearly defining the PACE "public benefit" and any requirements for issuing bonds under a PACE Program.
- Verify the priority and enforceability of lien status and consult with lenders to determine if lien may stay with the property in event of sale.
- Continue to work with bond council and financial advisors to evaluate financing options.
- Continue to work with AE's Customer Care staff to develop most effective vehicle for administering the PACE assessment.
- Review existing rebate programs and evaluate options under PACE program.

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