



MEMORANDUM

TO: Mayor and Council Members

CC: Marc A. Ott, City Manager

FROM: Larry Weis, General Manager 

DATE: November 27, 2013

SUBJECT: Status Update Report on Property Assessed Clean Energy programs under SB 385

Council Resolution No. 20130627-071 directed the City Manager to provide an interim report to Council by September 6, 2013¹ and a comprehensive status report by December 1, 2013 regarding development of the Property Assessed Clean Energy (PACE) program under SB 385.

The successful development and implementation of a PACE program requires extensive planning and coordination. After initial discussions and input from stakeholders, staff recommends that the City of Austin's full program design await the development and release of statewide standards for PACE programs in early 2014. This statewide toolkit, titled "PACE in a Box," is currently under development by Keeping PACE in Texas, a non-profit business association, with active participation by City of Austin staff. The goal is to create large regional PACE areas that follow a standardized design and implementation process in order to make PACE simpler and more accessible to a wide group of commercial, industrial, and multifamily properties. This standard program design can then be customized to meet local or regional needs.

In addition to participating in efforts coordinated by Keeping PACE in Texas, staff has consulted with stakeholders, including: the State Energy Conservation Office (SECO), the South-central Partnership for Energy Efficiency as a Resource (SPEER), Public Financial Management (PFM), the Travis County Tax Assessor/Collector, and the Capital Area Council of Governments (CAPCOG). Staff presented progress updates to the Electric Utility Commission and Resource Management Commission in November, during which commissioners encouraged proceeding with participation in statewide program development efforts. Austin Energy and Austin Water Utility staff are already working in coordination and plan to seek additional expertise from all relevant City Departments, such as Finance, Economic Development, and the Office of Sustainability.

Under the guidance of Keeping PACE in Texas, working groups composed of more than 100 expert stakeholders are developing recommendations for designing uniform PACE programs for Texas.² Five

¹ For background, please see attachment 1, dated September 6, 2013, titled "Interim Report in Response to Resolution No. 20130627-071 Re: Property Assessed Clean Energy (PACE) programs under SB 385" from Larry Weis to Mayor and Council Members.

² Please see Attachment 2: List of Keeping PACE in Texas Working Group participants as of 10/9/13.

working groups are designing toolkits with templates for overall program design, program underwriting standards, program technical standards, funding platforms, and education and marketing. Expert stakeholders represented on these working groups include: the Building Owners and Managers Association (BOMA), Texas Mortgage Bankers Association (TMBA), Texas Association of Business (TAB), Travis County Tax Assessor/Collector, Texas Association of Regional Councils (TARC), Environmental Defense Fund (EDF), Sierra Club, SECO, SPEER, PFM, and others.

Keeping PACE in Texas's timeline extends through 2014, with the design phase expected to be completed in early 2014, followed by a six-month marketing and education phase. Over the coming months, staff will continue working with Keeping PACE in Texas, property owners, third-party lenders, the Travis County Tax Assessor/Collector, other regional governmental entities, and other stakeholders to develop the elements of a regional PACE program and determine the appropriate roles and responsibilities of the various parties.

To date, progress from the Keeping PACE in Texas working groups includes:

- Discussions with PACE leaders nationwide regarding program design in other jurisdictions.
- Meetings with local governments from across Texas to share ideas for collaboration.
- Draft of program underwriting standards, including underwriting recommendations for project qualifications, owner qualifications, property qualifications, savings-to-investment ratio policies, and lender consent.
- Draft of program technical standards, including detailed recommendations regarding the measurement and verification of energy and water savings.
- Draft of funding platform recommendations, including recommendations regarding the use of financing (with an emphasis on third party financing).
- Marketing and outreach to educate stakeholders on PACE.
- Overall program design outlines for final toolkit development.

In order to adopt a PACE program, SB 385 requires cities or counties to take the following steps:³

- 1) Decide whether to administer the program or contract with a third-party administrator.
- 2) Identify program's geographic boundaries (multiple cities and/or counties can join together).
- 3) Develop a financing plan using bonds and/or third party financing.
- 4) Determine program eligibility and underwriting standards.
- 5) Take steps to establish the program, which include:
 - a. Publishing a report with details of a fully developed program;
 - b. Taking public input on the report and holding a public hearing; and
 - c. Adopting a "resolution of intent" to create a program based on the report.

After internal analysis, staff believes that a program design that relies on private, third-party financing (rather than public bonds) offers the cleanest and most expedient path forward, while also reducing complexity, administrative burdens, and financial risk. This is also the financing method favored by most participants in the development of statewide guidelines through Keeping PACE in Texas. Nonetheless, staff continues to examine all the financing options as guidelines are developed.

Additionally, consistent with the approach recommended by Keeping PACE in Texas, City staff recommends that any PACE program be administered at a regional level to ensure that Austin Energy and Austin Water customers outside the City's corporate limits could participate in PACE.

³ Please see Attachment 3 for a detailed list of tasks required to implement a program: "Outline of the Tasks and Decisions Required to Create a PACE Program under SB 385," prepared by University of Texas Law student Jared Milligan.

Council Resolution No. 20130627-071 also requests an updated analysis regarding the feasibility of on-bill financing. On-bill financing is a separate concept from PACE. SB 385 did not address on-bill financing. Therefore, the status of on-bill financing has not changed and still poses significant problems. The following, previously identified, legal concerns regarding on-bill financing remain.

- 1) A lack of legal authority to place non-utility charges on customers' utility bills;
- 2) A lack of legal authority to disconnect utility service for non-payment of a customer's loan repayment fee;
- 3) How to effect legal notice to subsequent purchasers or residents; and
- 4) Whether an on-bill financing program (whereby the City is essentially serving as the guarantor of loan repayment) would be in violation of the Texas Constitution's prohibition of a city lending credit or public money to private parties.

It is our understanding that the Texas Legislature may be examining potential legal impediments to on-bill financing during the interim period before the beginning of the 2015 Legislative Session. This could lead to the introduction of legislation enabling on-bill financing.

An update on all PACE-related activities described above will be included in a report to Council to be provided by March 1, 2014. Please contact me if you have any questions or concerns.



MEMORANDUM

TO: Mayor and Council Members

CC: Marc A. Ott, City Manager

FROM: Larry Weis, General Manager

DATE: September 6, 2013

SUBJECT: Interim Report in Response to Resolution No. 20130627-071 Re: Property Assessed Clean Energy (PACE) programs under SB 385

Resolution No. 20130627-071 directs the City Manager to provide an interim report to Council by September 6, 2013 and a full report by December 1, 2013 on: 1) the review of Senate Bill 385, also known as the Property Assessed Clean Energy (PACE) Act, and 2) the collaborative development of a local PACE program.

In response to this directive, staff assembled an internal PACE team to review SB 385 and coordinate development of a PACE program. The team has held exploratory discussions with various stakeholders, including representatives from the State Energy Conservation Office (SECO), the South-central Partnership for Energy Efficiency as a Resource (SPEER), Keeping PACE in Texas, the Travis County Tax Assessor/Collector, Austin Energy, Austin Water Utility, and the City of Austin Law Department.

PACE programs work by lowering the initial cost to property owners for making energy and water efficiency improvements. A “cost neutral” package of improvements is developed where assessment payments are expected to be less than or equal to the monthly reduction in utility bills. In addition, the financing stays with the property so that if it is sold, the new owner assumes the financing payments. In Texas, SB 385 enables PACE loan activity in the commercial, industrial and multifamily building sectors (but not the single-family residential sector). Energy and water efficiency improvements to such buildings in Austin would not only act as a catalyst for economic and job growth activity but would also be in alignment with the goals in the Austin Climate Protection Plan to facilitate the reduction of greenhouse gas emissions, as well as with the goals of Austin Water’s conservation programs.

The local benefits of establishing a PACE program are clear, however the successful development and implementation of a program requires extensive planning and coordination. As noted in the resolution, communities in other states have faced challenges when multiple PACE programs with different requirements are developed, complicating the education, marketing and delivery to the consumer. Therefore, initial discussions, PACE program webinars, research and meetings have led the internal PACE team to focus on a collaborative statewide effort being led by the non-profit “Keeping PACE in Texas,” whose efforts spearheaded passage of SB 385. Early challenges in other states indicate that the creation of multiple PACE regions that employ different design standards inhibits successful program implementation. In an effort to standardize, coordinate and promote PACE opportunities as much as

possible, City of Austin staff has taken an active role in the Keeping PACE in Texas effort to support and facilitate the development of a statewide “PACE-in-a-Box” toolkit that different regions can customize to meet their own needs, with Austin leading the way. Creating large regional PACE areas that follow a standardized design and implementation process may make PACE more accessible to a wider group of commercial, industrial, and agricultural properties. Pending a thorough legal review, the PACE team believes that SB 385 enables the successful development of a regional program.

Staff is participating in statewide working groups coordinated by Keeping PACE in Texas to tackle issues surrounding the legal and practical feasibility of PACE in a coordinated, standardized fashion. Under the guidance of Keeping PACE in Texas, five working groups (see attachment) have been formed to make recommendations for designing uniform PACE programs for Texas. More than 70 people are participating in the working groups, which will focus on designing toolkits with templates for:

- Program underwriting standards
- Program technical standards
- Funding platforms
- Education and marketing
- Overall program design

Keeping PACE in Texas’s timeline extends through 2014, with the design phase expected to be completed within six months, and followed by a six month implementation phase. Over the coming months, staff will continue working with Keeping PACE in Texas, property owners, third-party lenders, the Travis County Tax Assessor/Collector, other regional governmental entities, and interested stakeholders to develop the elements of a regional PACE program and determine the appropriate roles and responsibilities of the various parties.

Staff will present its PACE Program Update at the October or November Resource Management, Water and Wastewater Commission, and Electric Utility Commission meetings for their review and input prior to the full report back to Council. In addition, legal staff is working on the analysis and review of SB 385 and an updated evaluation regarding the feasibility of an on-bill financing option (which was not addressed by SB 385). On-bill financing issues previously identified include 1) the inability of a municipality to lend public credit for private purposes, 2) whether there is legal authority to place non-utility charges on customers’ utility bills, and 3) whether there is legal authority to disconnect utility service for non-payment of a customer’s improvement project repayment fee.

Findings from all the PACE-related activities described above will be included in a comprehensive status report to Council to be provided by December 1, 2013. Please let me know if you have any questions or concerns.

**Program Design and Implementation Working Group
Keeping PACE in Texas**

NAME	ORGANIZATION
Kip Averitt, CO CHAIR	TX Clean Energy Coalition
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George Arnold	True North Associates
Elliot Beck	Travis County Attorney's Office
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Tina Bui	Austin Water Utility
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Barksdale English	Austin Energy
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Doug McMurrain	Vail energy Group
Jared Milligan	UT Law School
Kenny Milne	Way Services
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Jamie Mitchell	Austin Energy
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**Underwriting Standards Working Group
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Heather Cooke	Austin Water Utility		X	X		
Donna Downey	Montage Consulting Group	X	X	X		
Barksdale English	Austin Energy					
John Fleming	TX Mortgage Bankers Assoc.				X	
Matt Golden	EDF - Investor Confidence Proj.					
Brian S. Harris	Jackson Walker					
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Abby Johnson	Abacus Property Solutions, LLC	X				
Kent Kirchstein	Schneider Electric			X		
Amy Knop-Narbitis	Austin Energy			X		X
David Matiella	USGBC					
J. Moore McDonough	McDonough Capital			X	X	
Steve Minick, CHAIR	TX Assoc. of Business					
Jamie Mitchell	Austin Energy		X		X	X
Joshua Pittman	Schneider Electric			X		
Jane Protas	Dallas Office of Economic Dev.					
Brian Ratcliff	Entegral Solutions	X				
Bryan Sams	NRG					
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Mark Walker	NRG					

**Technical Standards Working Group
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Vince Drieling	Johnson Controls
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	Water Conservation and Tech. Center, A&M, San Antonio
Calvin Finch	San Antonio
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Philip Gates	City of San Antonio
Matt Golden	EDF - Investor Confidence Project
Rich Herweck	TX Comb. Heat & Power Initiative
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David Malone	1st Choice Energy
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Cynthia Redwine	Clean Power Professionals
Andrea Roess	David Taussig & Associates, Inc.
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Scott Storment	Mission Verde Alliance
Tim Teske	Green Bank
Phil Tinsley	Demeter Power Group, Inc.
Rosa Rios Valdez	Business & Community Lenders of TX
Barry Williams	First Victoria National Bank

Education, Marketing and Training Working Group
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Steven Carlino	Indeck - Keystone Energy LLC
Ric Diaz	Brandt Companies, LLC
Donna Downey	Montage Consulting Group
John Dunn	The Brandt Companies, LLC
Holly Green	Hunton Services
Mary C. Hammer	City of San Antonio
Rich Herweck	TX Comb. Heat & Power Initiative
Charlene Heydinger	Keeping PACE in Texas
Doug Kirkley	Pepco Energy Services
Aleshia Larkins	Business & Community Lenders of TX
Luis LaRotta	Ecosense Energy
Doug Lewin	SPEER
Oscar Martinez	El Paso Green Communities
David Matiella	USGBC
Steve Minick	TX Assoc. of Business
Tim Murray	WHR Architects
Alison Nathan	SECO
Callie Pace, CHAIR	Way Services
David Parker	1st Choice Energy
David Quin	TX Conf. of Urban Counties/P3
Brian Ratcliff	Entegral Solutions
Brandon Ray	University of Houston
Penny Redington	TX Assoc. of Regional Councils
Cathy Redson	Longhorn Solar
Cyrus Reed	Sierra Club
Rick Rhodes	TX DoA, Office of Rural Affairs
Ty Sanders	Atlas Efficiency Solutions
Russel Smith	TREIA
Dwight C. Storie	Johnson Controls Inc.
Scott Storment	Mission Verde Alliance
Matthew A Thompson	Principal Solar Institute
Michael West	Texas DoA, Office of Rural Affairs
Ken Whiteside	ONTILITY
Mark Wilshire	Bradford Management Co (BOMA)
Vince Zubicek	Schneider Electric

PROPERTY ASSESSED CLEAN ENERGY**Outline of the Tasks and Decisions Required to Create a PACE Program under SB 385**

To create a PACE program, a county or municipality (“local government”) must make a number of decisions:

1) How will the program be administered?

- a. A local government may:
 - i. **administer the program itself**; this involves hiring and setting the compensation of a program administrator and program staff, or contracting for the professional services necessary to administer the program, 12 Tex. Loc. Gov’t Code § 399.008(d);
 - ii. **jointly implement a regional program**; a local government may implement a program with any combination of other local governments, working with other local governments may help to promote uniform and sustainable programs, *see id.* at § 399.017; or
 - iii. **contract with a third party to administer the program**. Before contracting with a third party administrator, a local government should use a Request for Proposal (RFP) to judge the potential administrator’s qualifications, experience, and capabilities, *see id.* at § 399.008(d).

2) What will the boundaries for the program’s region be?

- a. A region’s boundaries can be separate, overlapping, or coterminous. *Id.* at § 399.007(d).
- b. A local government can designate one or multiple regions for implementing a program located within the local government’s jurisdiction (a municipality’s jurisdiction includes the municipality’s extraterritorial jurisdiction). *Id.* at § 399.007(b) – 399.007(d).

3) How will the local government finance eligible projects?

- a. A local government must develop a form contract between the local government and the property owner specifying the terms of assessment under the program and the terms of financing provided by a third party or local government. *Id.* at § 399.009(a)(2).
- b. If 3rd party financing:
 - i. develop a plan to ensure sufficient capital; and

- ii. develop a form contract between the local governments and the third party regarding the servicing of the debt through assessments. *Id.* at §§ 399.009(a)(3), 399.009(a)(6).
- c. If the local government will finance the project, develop a plan to raise capital. *Id.* at § 399.009(a)(6).
- d. If bonds will be issued to provide capital to finance qualified projects:
 - i. decide what the maximum annual dollar amount for financing projects through contractual assessments provided by the local government will be, *id.* at § 399.009(a)(7)(A);
 - ii. determine a method for ranking requests from property owners for financing in priority order if requests appear likely to exceed the maximum amount, *id.* at § 399.009(a)(7)(B);
 - iii. develop a procedure for determining the interest rate and period during which contracting owners would pay an assessment, *id.* at § 399.009(a)(8); and
 - iv. develop a procedure for determining the maximum amount of an assessment, *id.* at § 399.009(a)(7)(C).
- e. Develop a method for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations. *Id.* at § 399.009(a)(10)
- f. Develop a method for ensuring that the period of a contractual assessment does not exceed the useful life of the project that is the basis of the assessment. *Id.* at § 399.009(a)(8).
- g. Develop procedures for collecting the proposed contractual assessments. *Id.* at § 399.009(a)(16).

4) Based on the above information, what will the application process and eligibility requirements for the program will be?

A local government must:

- a. decide what kinds of qualified projects will be subject to contractual assessments, *id.* at § 399.009(a)(4);
- b. develop quality assurance and anti-fraud measures for the program, *id.* at § 399.009(a)(15); and

- c. decide what marketing and/or participant education services will be provided for the program, *id.* at § 399.009(a)(14). *Id.* at § 399.009(a)(9).

After a local government has answered the questions above, a local government must complete the following tasks to create the program:

1) Publish a report for the proposed program including:

- a. a map showing the boundaries of the proposed region;
- b. a form contract between the local government and the property owner specifying the terms of assessment under the program; and the terms of financing provided;
- c. if the proposed program provides for third-party financing, a form contract between the local government and the third party regarding the servicing of the debt through assessments;
- d. a description of types of qualified projects that may be subject to contractual assessments;
- e. a statement identifying a local government official authorized to enter into written contracts on behalf of the local government;
- f. a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for local government financing for qualified projects;
- g. if bonds will be issued to provide capital to finance qualified projects as part of the program:
 - i. the maximum aggregate dollar amount for financing through contractual assessments to be provided by the local government;
 - ii. a method for ranking requests from property owners for financing in priority order if requests appear likely to exceed the maximum authorized amount
 - iii. a method for determining: the interest rate and period during which contracting owners would pay an assessment; and
 - iv. a method for determining the maximum amount of an assessment;
- h. a method for ensuring that the period of the contractual assessment does not exceed the useful life of the project that is the basis for the assessment;
- i. a description of the application process and eligibility requirements for financing qualified projects;

- j. a method for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations;
- k. a statement explaining the manner in which property will be assessed and assessments will be collected;
- l. a statement explaining that a property owner must obtain written consent from the holder of a mortgage lien, if applicable before, before participating in a PACE program, *see id.* at § 399.010;
- m. a statement explaining that a review of baseline water or energy conditions and projected water or energy savings is required for each project, as well as verification that the qualified project was completed as intended (any review must be conducted by an independent third party), *see id.* at § 399.011;
- n. a description of the marketing and participant education services to be provided for the program;
- o. a description of the quality-assurance and anti-fraud measures to be instituted for the program; and
- p. the procedures for collecting the contractual assessments. *Id.* at § 399.009(a).

2) Make the report available for public inspection:

- a. on the local government's website; and
- b. at the office of the official designated to enter into written contracts on behalf of the local government. *Id.* at 399.009(c).

3) Adopt a resolution of intent to create a program.

Include:

- a. a finding, if appropriate, that financed projects will serve a valid public purpose;
- b. a statement that the local government intends to make contractual assessments to repay financing;
- c. a description of the types of qualified projects;
- d. a description of the boundaries of the region;
- e. a description of any proposed arrangements for third-party financing;

- f. a description of local government debt servicing procedures if the program uses third-party financing;
 - g. a reference to the report for the proposed program and a statement identifying the location where the report is available for public inspection;
 - h. a statement of the time and place for a public hearing on the proposed program; and
 - i. a statement identifying the appropriate local official and the appropriate assessor-collector for purposes of consulting regarding collecting the proposed contractual assessments with property taxes imposed on the assessed property. *Id.* at § 399.008(a)(1).
- 4) Hold a public hearing at which the public may comment on the proposed program, including the report for the proposed program.** *Id.* at § 399.008(a)(2).
- a. If two or more local governments implement a program jointly, a single public hearing is sufficient to satisfy this requirement. *Id.* at § 399.017(b).
- 5) Adopt a resolution establishing the program and the terms of the program that includes:**
- a. each item included in the report for the proposed program—this resolution may incorporate the report, or the amended version of the report, by reference, *id.* at § 399.008(b); and
 - b. a description of each aspect of the program that may be amended only after another public hearing is held. *Id.* at § 399.008(a)(3).