

# Green Building Law Update

*Environmental Law and Sustainability for Business*

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## PACE Bill Due in Baltimore City

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By Stuart Kaplow, Esquire

A public hearing is scheduled tomorrow on a Property Assessed Clean Energy (PACE) loan program ordinance in Baltimore City.

I have previously described that PACE "could be bigger than anything in U.S. real estate since the invention of the glass window."

PACE loan programs, where payments for energy efficiency, water conservation and renewable energy improvements to real estate are made through a building owner's property tax bill are gaining acceptance nationally including programs being implemented across Maryland.

PACE state enabling statutes generally authorize local governments to engage private sector lenders to provide upfront low interest financing to property owners for qualified projects (e.g., HVAC system upgrades, photovoltaic systems, cool roofs, etc.), and to collect the repayment through annual assessments on the property's real estate tax bill. The term of PACE loans can be extended up to 20 years and more, often resulting in utility and other cost savings that exceed the amount of the assessment payment.



The concept is not new, but nationally including in Maryland, "residential" PACE programs were put on hold as a result of a directive in 2011 that Fannie Mae and Freddie Mac refrain from purchasing mortgage loans secured by properties with outstanding PACE obligations. However, as I wrote in this blog on July 24, 2016, [HUD Jumpstarted Financing For Homes](#), reversing their previous position and now widely allowing residential PACE loans on top of FHA and VA loans (but still not on top of Fannie Mae and Freddie Mac loans).

The Department of Energy says that there are active commercial (as opposed to residential) PACE programs in at least 9 states and DC and enabling laws enacted or programs in development in another 23 states.

PACE offers a host of benefits as proposed in Baltimore, including: removing the barrier of a large upfront cash outlay by the property owner; allowing 100% financing of improvements in amounts over loan value ratios available in the marketplace, including without disturbing existing mortgage financing; underwriting tied to the property and improvements and not individual creditworthiness; repayment over a long period of time (up to 20 years); low interest rates resulting from high security of repayment; reduced utility bills that can offset the payments; the obligation to repay runs with the property and not the owner; the improved properties have an increased value, benefiting both the owner and the

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property taxing authority; the owner may be eligible to take advantage of federal, state and local tax incentives; under most commercial leases the PACE payment (on a property tax bill) can be passed along to the tenant avoiding the 'split incentive' problem; local government can facilitate the program with no direct debt obligation; and more.

Baltimore is proposing to allow the PACE financing of any equipment, device or material intended to improve energy efficiency, including in new construction (e.g., providing opportunities to separately finance the top 20% of a construction project or ..), from automated energy control systems and HVAC replacement to insulation of any wall or roof and replacement roofing or measure reducing water usage as well as any other installation or modification that is a utility cost saving measure.

In the event of a default, the amount in default (but not the entire principal of the PACE loan) is a liability that is a property tax lien collected by the local government with the priority associated with other real property tax liens, so existing mortgage holder consent to a PACE loan is required.

Commercial PACE programs are still very new. Despite enabling [laws in 32 states](#) (including forgone early residential programs) local enactments are also required and then the program must be created, including enticing lenders. Early programs were financed with a pooled revenue bond or for large projects a standalone bond, but today private lenders have entered the open market. While [Sonoma County](#) was an early innovator, [Connecticut](#) has a widely admired statewide green bank program that is up and running and it is the model for Maryland.

[Maryland](#) is typical. Its original PACE law enacted in 2009 was put on hold after the 2011 guidance from the federal government. Today, with [SB 186](#), the current state enabling law passed in 2014, as tweaked by [SB 173](#) earlier this year, the first commercial PACE program is now up and running in [Montgomery County](#). Local laws are also on the books in [Anne Arundel County](#), Howard County, Queen Anne's County, and Garrett County where programs are being created. And legislation is scheduled for a vote in Frederick County on September 20 and in [Baltimore County](#) on October 3.

Today what is authorized in Maryland and elsewhere are only commercial programs and, generally, new state enabling laws are required to authorize residential PACE programs before they can be implemented by local governments.

A public hearing on Baltimore City Council Bill 16-0692 is scheduled for September 13. With 15 of the 17 City Council members as co-sponsors the bill is likely to be enacted despite the initial negative comments from the City Department of Finance.

The Baltimore bill was introduced at the request of [CBJ Energy](#), a lender whose principals have strong PACE industry cred. There are at least half a dozen other lenders eager to provide the upfront capital for PACE loans in Maryland. The average building owner is desirous of reducing its utility bills. What is wanting in Maryland and in many places across the country are the property tax authority programs that authorize PACE lending.

PACE programs are great for the planet and awesome for business. It is clear that in 2017 there will be more of them across Maryland including hopefully in Baltimore and ideally across America.

*We work with property owners and builders across the country, including to evaluate the financing of green building projects. If we might assist you in evaluating PACE financing or other matters of green building or sustainability, do not hesitate to give Stuart a call at 410-339-3910.*

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