

Wisconsin PACE Financing Ready to Accelerate

Property assessed clean energy (PACE) financing is poised to provide more Wisconsin commercial property owners and developers with the means to finance energy-efficient improvements. PACE financing is an important tool for property owners looking to update aging building infrastructure, engage in adaptive reuse of existing buildings, construct new, energy-efficient buildings or install energy-generating equipment.

PACE financing involves a loan made by a private lender to a property owner for purposes of making energy-efficient improvements, the payments for which are collected by a taxing authority as a special charge on the real property tax bill for the improved property. PACE financing in Wisconsin is authorized by Wisconsin Statutes section 66.0627. This statute authorizes taxing authorities to collect PACE charges by entering into an agreement with a private lender and a property owner that obligates the taxing authority to collect the payments for the private lender. Before participating in PACE financing, a taxing authority must enact, by ordinance or otherwise, requirements for the approval and collection of PACE charges.

PACE financing covers 100% of the cost of energy-efficient improvements over amortization periods of up to 20 years. The financing is typically nonrecourse and features competitive interest rates. The types of energy-efficient improvements that can be financed include:

- Heating, ventilation and air conditioning equipment and controls.
- Water heaters and water conservation measures.
- Lighting equipment.
- Refrigerated storage improvements.
- Building envelope improvements, including roofing, walls, windows and doorways.
- Renewable energy systems, including solar equipment.

The primary question of whether an energy-efficient improvement would qualify is whether the improvement will be permanently affixed to the real property. For instance, an affixed refrigerated case may qualify, but an easily removable

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energy-efficient refrigerator may not.

One unique aspect of PACE financing is that the energy or operational savings generated by the improvements must exceed the principal investment in connection with the improvements over the useful life of such improvements. While this feature makes PACE financing very attractive to property owners and tenants, it requires a detailed analysis by an energy consultant to determine energy savings. In some cases, the energy consultant must guaranty to the property owner that the energy savings will exceed the principal investment in the improvements. For most properties, this requirement places a de facto limit on the amount that can be financed, with the typical amount being \$500,000 to \$3 million.

The annual payments for PACE financing are added to the real property tax bill as a special charge, which is collected with the real estate tax payment—similar to a special assessment—along with a small annual fee to cover administrative costs. The City of Milwaukee allows for the annual payments to be made in ten installments; the City then remits the payment amount collected to the private lender. This structure minimizes risks for private lenders because failure to pay the real estate tax bill in full, including the PACE charge, could result in a tax foreclosure. The private lender, however, does not have an independent right to foreclose on the property or sue a landowner, and a PACE charge becomes a lien on the real property only after a payment is delinquent.

To evidence PACE financing, an agreement between the property owner, lender and borrower is recorded against the real property. The City of Milwaukee requires that property owners obtain the consent of any current mortgage lender with a security interest in the property prior to obtaining PACE financing. Mortgage lenders are often willing to consent to PACE financing as the improvements increase the cash flow and value of the real property that serves as the lender's collateral.

The use of PACE financing has a number of benefits for property owners and municipalities. Property owners obtain long-term nonrecourse financing that covers 100% of the cost of energy-efficient improvements. The PACE charges may be passed through to triple-net tenants, or be assigned to a future buyer of the property. Depending on the property owner's situation, the PACE financing may be classified as equity in a larger financing structure, or qualify for off-balance sheet accounting treatment. Municipalities gain a method to spur economic development and promote environmental sustainability at low or no cost.



At present, the City of Milwaukee is the only taxing authority in Wisconsin facilitating commercial PACE financing, but several other jurisdictions are currently exploring implementing PACE programs. Milwaukee recently facilitated only its second PACE project since enacting a PACE ordinance in 2013, but signs are pointing towards more projects being approved in 2015. Previously, the pool of available funds for PACE financing was relatively small. Fortunately, PACE Equity LLC, an energy consultant and PACE financier, recently secured a substantial source of funds for PACE financing and is ready to help facilitate the use of PACE charges in Wisconsin and nationwide. As the number of jurisdictions with PACE programs grows, and the pool of available funds for PACE financing increases, property owners and developers should not overlook this cost- and energy-efficient method of financing improvements.

Reinhart can assist property owners, developers, lenders and municipalities in navigating PACE financing programs. If you would like more information about PACE financing, please contact your Reinhart attorney.

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