



## Proposed Changes to PACE: What You Need to Know

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On May 24, 2023, the Michigan Senate passed two bills, Senate Bill 302 (SB 302) and Senate Bill 303 (SB 303), proposing amendments to the current Property Assessed Clean Energy (PACE) program.<sup>[1]</sup> PACE is a financing tool that grants commercial or industrial property owners funds to implement energy efficiency and renewable energy upgrades in their facilities. Property owners receive 100% pre-funding with no upfront costs. The property owners then pay back the private loan over 15-20 years for these upgrades. SB 302 and SB 303 would expand the scope of PACE, which some have argued is too restrictive, to include additional types of properties and projects.

### **SB 303**

The proposed amendments under SB 303 would modify PACE to allow local units of government and property owners to finance environmental hazard projects. This means that local governments and property owners could acquire, install, replace, or modify equipment, devices, or materials to address environmental hazards. These hazards would include mitigating heavy metals in potable water systems and lead paint contamination, mitigating the effects of floods or draughts, and increasing property resistance to severe weather.

SB 303 would also allow the owner of an agricultural property to participate in a PACE program. Currently, only privately-owned commercial or industrial property is eligible. Additionally, SB 303 specifies that a local government would be responsible for removing a lien on a property assessed under a PACE program. The bill also proposes to extend a local government's authority to issue bonds or notes for projects that improve public health or and protect against climate hazards.

### **SB 302**

SB 302 also expands the scope of PACE. For example, to establish a PACE program a local government must develop a report that includes a plan to raise capital and finance improvements subject to the Revised

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Municipal Finance Act. However, SB 302 would instead require that the finance plan be subject to Section 15 of the Property Assessed Clean Energy Act. The bill also specifies that a report must include a baseline energy audit before an energy project can begin.

If a project is assessed at over \$250,000, PACE requires that a contractor guarantee to the owner that the project will achieve a savings-to-investment ratio greater than one and agree to annually pay the property owner for any shortfall. SB 302 would allow a property owner to waive this requirement and exempt any new construction energy projects from this provision as well.<sup>[2]</sup> A new construction energy project would also be required to include in its report that the proposed building or structure exceeds applicable requirements of the Michigan Uniform Energy Code, 10 and 10a of the Construction Code, and specified rules under the Michigan Administrative Code.<sup>[3]</sup> For example, the Michigan Uniform Energy Code establishes insulation, roofing, and demolition requirements for the construction of buildings related to their energy usage and performance. The specified Administrative Rules regulate residential and commercial building energy efficiency. Under SB 302, a new construction energy project must show that it exceeds such requirements.

SB 302 would further amend PACE to authorize local governments to issue bonds or notes to finance PACE projects if the bonds or notes further a public and governmental purpose. This amendment extends the number of projects eligible to receive such funding from local governments.

### **Going Forward**

SB 302 and SB 303 have received bi-partisan support in the State Senate and have been referred to the House of Representatives. The bills are currently being reviewed by the House Committee on Energy, Communications and Technology. If passed by the House, the Bills would then go to Governor Gretchen Whitmer to be signed into law before taking effect.

If you have concerns about the potential impact of these bills, contact a member of the municipal law team.

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[1] SB 302 is “tie-barred” to SB 303, meaning that SB 302’s passage is conditioned on whether SB 303 is signed into law. The bills passed 24-14.

[2] The bill defines a “new construction energy project” as an energy project that occurs at newly constructed building or structure, or significant modifications to an existing building or structure. See 2023 S.B. 303.

[3] Specifically, new construction energy projects must comply with R 408.31087 to 408.31099 of the Michigan Administrative Code. See 2023 S.B. 302.