

**ATTACHMENT A**

**A RESOLUTION DECLARING THE LEGISLATIVE PRIORITIES OF THE CARRBORO  
BOARD OF ALDERMEN FOR THE 2010 SESSION OF THE N.C. GENERAL ASSEMBLY  
Resolution No. 126/2009-10**

WHEREAS the General Assembly of the State of North Carolina will begin its 2010 session in May of 2010, and

WHEREAS the Carrboro Board of Aldermen wish to express their legislative priorities for this session to the individuals and groups which represent their legislative interests, and

WHEREAS, those individuals include Carrboro's delegation to the General Assembly as well as the NC League of Municipalities and the Triangle J Council of Governments,

NOW THEREFORE BE IT RESOLVED that the Carrboro Board of Aldermen's legislative priorities for this session, include (not in order of importance):

The Carrboro Board of Aldermen met with members of the Orange County legislative delegation on Friday, January 23, 2009 at 7:30 a.m. in Room 109 of Carrboro Town Hall.

**Present:**

Mayor	Mark Chilton
Aldermen	Dan Coleman
	John Herrera
	Randee Haven-O'Donnell
	Lydia Lavelle
Town Manager	Steven E. Stewart
Town Attorney	Robert Hornik for Michael B. Brough
Assistant Town Manager	Bing Roenigk
Senator	Eleanor Kinnaird
Representatives	Joe Hackney
	Verla Insko

**Absent:**

Aldermen	Joal Hall Broun
	Jacquelyn Gist
Representative	Bill Faison

The Mayor and Board of Aldermen reviewed their legislative priorities with the delegation. Those priorities are as follows:

**REQUESTED LOCAL BILLS**

1. Town Charter amendment to add sexual orientation, gender identification, and gender expression to the list of bases upon which the Board of Aldermen may by ordinance prohibit housing discrimination.
2. Town Charter amendment authorizing the Board of Aldermen to provide by ordinance that no deed restriction or covenant can have the effect of limiting or prohibiting the use of green or sustainability features on a residential property, including but not limited to solar collectors, clotheslines, rain barrels, garden fences, or other similar items.

**SUPPORT FOR THE FOLLOWING STATE-WIDE LEGISLATION**

1. Triangle J Council of Governments' 2009 Regional Legislative Agenda, except where noted below.
2. N.C. League of Municipalities' Legislative Agenda, except where noted below.
3. Energy efficiency standards for residential and commercial construction.
4. Climate Change Commission recommendations.
5. Additional taxes to fund regional public transit, including a commuter rail system.
6. Increased funding for the N.C. Housing Trust Fund.
7. Increased medical benefits for uninsured children.
8. Greater state-wide funds for mass transportation including:
  - a) Connections between Durham/Chapel Hill/Raleigh
  - b) Greater funds for buses
  - c) Program that connects and discusses more public transit east to Raleigh/Durham.
9. Opposition to any tax scheme that does not allow cities and counties to tax undeveloped property when it is subdivided.
10. Additional funding and legislation to help mentally ill people and support for Freedom House's request for state funding.

11. Senator Kinnaird's living wage legislation.
12. Ban on smoking in public facilities in North Carolina.
13. Various child care subsidy programs and early childhood subsidy programs, including low-wealth schools.
14. Repeal of State Statute 95-98 which prohibits collective bargaining by public employees.
15. Land for Tomorrow initiative.
16. Opposition to state funding or participation in the Federal 287(g) program, and review of the effectiveness of that program.
17. Request for a comprehensive water resource conservation/efficiency requirements and land use planning requirements.
18. Request for increased energy efficiency and conservation legislation and opposition to additional coal and nuclear power facilities being established.
19. Consumer protection legislation and opposition to predatory lending practices, and strengthening of laws dealing with foreclosures.

The Board also discussed the State budget situation with the delegation.

No action was taken.

The meeting was adjourned at 8:35 a.m.

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Mayor

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Deputy Town Clerk



# NCLM Advocacy Agenda 2009–2010

UPDATED FALL 2009

## Advancement and Protection of Core Municipal Principles

The League will advance and protect core municipal principles. These include ensuring a stable, reliable municipal revenue stream; maintaining the flexibility needed for sound fiscal management; advocating against unfunded, burdensome mandates; preserving local authority and decision-making; adhering to standards of ethical conduct and open government; providing wide-ranging services without overly burdensome liability; and ensuring citizens are well served through cost-effective, environmentally responsible operations, planning and land management.

## Annexation for Fair, Managed Growth

The League continues to support careful change to the long-standing municipal annexation laws in a way that provides for fair and equitable consideration of all citizens' needs and concerns and allows cities and towns to grow in an orderly manner.

## Air Quality

The League will seek legislation and administrative action to obtain technical assistance and to authorize the use of tools such as early action compacts to promote regional cooperation and assist nonattainment areas in complying with new ozone regulations.

## Water Resources

The League will seek legislation to provide for the gathering of data for all water withdrawals sufficient for basin-wide modeling and future allocation decisions. The League will seek amendments to water allocation legislation to provide for the appropriate duration of permits, protection of existing municipal withdrawals, autonomy in determining rate structure, and simplifying and integrating the state water and sewer funding process. The League will seek legislation or administrative changes to promote water reuse, including a redefinition of reclaimed treated water as a resource for non-potable purposes. The League will seek further study of water storage needs and methods, including surface and aquifer conservation and storage.

## Municipal Incorporation Reform

The League will seek legislation imposing more stringent requirements on new municipal incorporations and requiring an incorporation proposal to receive a positive recommendation from the Joint Legislative Commission on Municipal Incorporations in order to be considered by the General Assembly.

## Infrastructure Financing

The League will work to ensure that both long- and short-term solutions are developed and implemented to address critical infrastructure financing needs for roads, bridges, transportation systems, water, sewer, stormwater facilities and affordable housing. The League will seek legislation to provide additional funds for key municipal infrastructure, including long term permanent sources of dedicated revenue, additional local option revenue sources, and state bond packages for infrastructure needs.

## Energy/Sustainability

The League will seek legislation to enhance the ability of municipalities to implement sustainable, energy-efficient practices and programs, and to remove obstacles to doing so, through incentives, funding and research. The League will further seek to clarify local government land use authority related to renewable energy facilities.

MORE

### **Alcoholic Beverage Control**

The League will seek further legislation to strengthen municipalities' ability to regulate inappropriate location of licensed alcohol establishments. Significant secondary effects have arisen from the inappropriate location of alcohol establishments. (Partially addressed by passage of HB 186, 2009)

### **Sanitary Sewer Overflows**

The League will seek legislation or administrative changes to address inequities and inconsistencies in the issuance of notices of violation and civil penalties for sanitary sewer overflows.

### **Stormwater Fees**

The League will seek legislation to codify the obligation of governmental agencies with regard to payment of local government stormwater utility fees for agency facilities.

### **Electronic Notices**

The League will seek legislation to authorize municipalities to use the option of electronic means to provide public notice for certain public hearings. Providing internet notice for select public hearings is today a more effective and efficient method for reaching interested citizens in many communities.



## NCLM Core Municipal Principles 2009–2010

*The following principles provide a foundation for advocacy and strategic planning to ensure excellence in municipal government as our North Carolina cities and towns serve their citizens and promote a 'hometown' quality of life unique to North Carolina communities:*

### Adequate Municipal Authority

*Municipalities need a broad grant of authority and flexibility to allow elected officials to make decisions that effectively and efficiently meet the ever-expanding needs of their citizens.*

Voters elect municipal officials to decide significant issues in the public interest, which varies within the unique context of each municipality. Accordingly, the League stands opposed to legislation preempting municipal authority and to measures designed to otherwise erode local control of significant municipal issues. Municipal grants of authority should be broadly construed to include supplemental powers reasonably necessary to carry out the functions.

### Municipal Revenues

*Sound municipal government requires preservation and enhancement of the existing tax and revenue structure.*

The property tax, state-collected local taxes and revenues, and various local option revenue sources are all integral components of a stable, reliable and balanced revenue stream for municipalities. State-collected revenues should be distributed reasonably and equitably, providing local elected officials autonomy to best determine their use. New revenues, including those that may be obtained through local option revenue sources, are essential to meet the future needs of municipal citizens, to provide the infrastructure necessary for vital public services, and to fairly apportion the costs of growth. It is also imperative that any lost or repealed revenues be replaced, retroactively if necessary.

### Municipal Expenditures

*Fiscal integrity and sound financial management require flexibility to borrow, invest and expend funds for public purposes.*

Cities are challenged to use the funds entrusted to them in the most efficient and responsible manner possible. Flexibility in financing options and expansion of municipal investment authority provide basic tools to help meet that challenge. The capacity to determine the nature and amount of an expenditure, based upon the totality of factors involved within the unique context of each city, is essential to economic efficiency and management. Cities need discretion to fund investments in infrastructure and local improvements such as affordable housing, redevelopment projects, and business and economic incentives.

### Mandates

*The state and federal governments should not enact burdensome and expensive mandates without adequate local authority, flexibility and additional financial resources for implementation and continuation.*

Mandates to perform functions or activities placed upon cities by the state or federal governments, either directly or through agency or administrative action, should be accompanied by funds for their implementation and continuation. Cities should not be required to appropriate funds for particular programs or functions, or to contract with private companies for public services. Management and human resources decisions must remain in the sound discretion of the municipal governing body.

MORE

## Open Government and Ethical Conduct

*All levels of government should adhere to principles of responsible open government and ethical conduct.*

The League supports the principle of openness in government and endorses the concept that meetings of governmental bodies should be open to the public. There are reasonable exceptions that should permit closed sessions when such limitations are in the public interest. Public records should also be available to the public with reasonable exceptions for protection of confidentiality that are in the public interest. Elected and appointed officials should adhere to standards of conduct that promote public confidence in our system of governance. Requirements regarding openness, access to records, conflict of interest and ethical conduct should apply across all levels of government to include state, county, and municipal bodies.

## Municipal Liability

*Fundamental rules pertaining to the liability of governmental entities should apply across all levels of government.*

Municipalities continually seek to provide a wide range of services to meet the needs of their citizens in furtherance of the public health, safety, and welfare. Accordingly, the League stands opposed to proposals placing burdensome liability upon municipalities, including measures that seek to erode well-established principles of immunity or other defenses, and to proposals unfairly imposing cost-shifting upon municipal taxpayers.

## Municipal Growth

*Healthy municipal centers are essential to the economic viability of the state. Municipalities must maintain the ability to expand and provide the higher level of services demanded by the citizens.*

Cities and towns are the economic engines of the state and must be permitted to grow in an orderly and reasonable manner that supports the continued economic development of the state. New growth in and around existing municipalities should utilize existing infrastructure for the most efficient use of public revenue. Annexation ensures that all those who benefit from a municipality through use of the infrastructure, municipal amenities, proximity to jobs, commerce, and cultural resources, bear a fair share of the cost of providing those services. The legislature should not permit a new incorporation whose primary purpose is to prevent a proposed annexation without evidence of its ability to provide the necessary services. Municipalities are encouraged to enter into agreements to foster inter-local cooperation and long-range planning.

## Municipal Services

*Municipalities require adequate authority and flexibility to finance, operate and manage essential services to protect public safety, promote sanitation, health and welfare, and improve the quality of life.*

In order to serve growing urban populations with water, sewer, transportation, police protection, fire protection, solid waste, stormwater, electricity, parks and recreation, public housing, and other services, municipalities need the autonomy to make appropriate management, human resources, financial, and operational decisions. With regard to enterprise services, municipalities must be free to determine appropriate rates and service areas, and free to determine when it is appropriate to enter into regional or multi-jurisdictional arrangements. State taxes or fees should not be imposed on municipal enterprise services. Furthermore, the power of eminent domain must be preserved as a means of acquiring property to provide municipal infrastructure, facilities, and services for the public benefit.

MORE

## Planning and Land Use

*Municipal planning authority must be maintained for sound growth, long-range planning and growth management.*

Long range municipal planning is an essential aspect of municipal health and economic viability. Vibrant, well-planned cities are the economic engines of the state, attracting new businesses and industries, while providing the quality of life expected by residents in and around municipalities. Public participation and private property rights are key elements of growth management. For this reason, the government closest to the people is the best venue for making land use decisions. Municipal authority must be maintained and enhanced to allow for more flexibility and options. Necessary tools for planning include the ability to zone, to review and approve buildings and new development, exercise extraterritorial jurisdiction, urban redevelopment, and economic development strategies. Municipalities must have the capability to protect and plan for infrastructure, as well as ensure that the public health, safety and welfare of the citizens are preserved.

## Environmental Protection

*For municipalities to be successful partners in environmental protection, environmental laws, practices and regulations must be science-based, feasible, and equitable, with flexibility to comply in the most cost-effective manner.*

Local governments are partners with state and federal agencies in protecting the environment and quality of life for our citizens, serving as both regulators and members of the regulated community. As regulators, municipalities need adequate authority to set standards, enforce requirements, and perform inspections. The discretion to impose more stringent requirements than the state when necessary to protect public health or the environment must not be impaired, and delegation of any state regulatory programs must be voluntary. The state should continue to provide technical assistance to local governments as well as its share of financial resources for the implementation of environmental programs. In supporting environmental programs, local governments as well as the state should maintain the ability to make reasonable, equitable, and justifiable adjustments in permitting and compliance fees to help recover the costs of regulatory programs.

As members of the regulated community, municipalities must be allowed full participation in the development of new environmental laws and regulations. Environmental laws, practices and regulations should be based on sound science, be technologically and economically feasible, apply equitably to all contributors of pollution, allow the flexibility to attain standards using those practices best suited to the topographical, hydrological, atmospheric, and other characteristics of the jurisdiction and provide incentives that recognize existing environmental programs. The state and federal governments should fully analyze costs associated with environmental requirements before adopting them.





## 2009 Regional Legislative Agenda

### Triangle J Council of Governments

In the North Carolina General Assembly  
Priority Legislative Issues for the Triangle J Council of Governments

Each year the Triangle J Council of Governments revises and updates its Regional Legislative Agenda setting forth the priority legislative issues of its member local governments from across the seven-county area of Region J. This agenda has been compiled for the purpose of conveying vitally important information to the General Assembly for its review, consideration, and use as the legislature conducts its legislative session. After taking into consideration the various challenges that will be confronting the State of North Carolina during its 2009 Session, it is the intent of Triangle J that this Regional Legislative Agenda serve as an aid to the legislative delegations serving Lee, Chatham, Orange, Durham, Wake, Johnston and Moore Counties in assisting our cities, towns and counties with their legislative needs. The following information has been set forth in priority form for this purpose:

### VERY HIGH PRIORITIES

**Provide Revenue Options for Local Government:** Triangle J seeks legislation that authorizes a variety of revenue options by resolution for local governments to fund municipal and county services that confront the significant growth issues of Region J. An overarching principle is that any local government revenue source that is presently available to one or more local governments in the state should be available to all local governments uniformly throughout the state. Triangle J seeks authority for local government, on a reasonable basis, to levy local option sales taxes, use a prepared food tax, apply impact fees and/or taxes, utilize land transfer fees, allow a tax exemption method to recover municipal and county sales tax expenditures rather than a system of reimbursements, etc.

**Transportation Planning and Funding:** Triangle J seeks legislation and funding for the myriad of multi-modal transportation needs within the region that are now in crisis. The region seeks the funding of planning and infrastructure needs associated with the Transportation Improvements Plan (TIP), Metropolitan Planning Organizations (MPO's), Rural Planning Organizations (RPO's), Powell Bill Funds, local transit authorities, and the Triangle Transit Authority. The region also supports legislation to revisit and update the state's Equity Formula to recognize growth, congestion and other factors bearing on the distribution of transportation dollars. Triangle J also supports legislation to provide for the funding of regional multi-modal planning of Region J's transportation needs, while further supporting adequate appropriations for road and bridge maintenance to maintain existing infrastructure. The region opposes the transfer of funds from the Highway Trust Fund to the General Fund and supports recovery of funds that were previously transferred. Any grant of additional or expanded authority to fund or maintain transportation programs by local governments must be accompanied by equivalent revenue authority from the State.

**Mental Health Crisis:** Triangle J supports Mental Health Reform and seeks legislation that assures local capacity to serve the needs of these citizens. The state must support local government, both financially and statutorily, to equip itself with adequate tools for crisis intervention and appropriate housing for the mentally ill to allow their integration into local communities.

**Water Quality/Supply and Infrastructure:** Triangle J supports legislation for the following water resource initiatives:

- Legislation directed at managing water resources should encompass a regional approach, provide incentives for regional cooperation, and seek long-term solutions for water resource planning
- Provide incentives and/or tax relief for low income households and small businesses that install water conservation devices and fixtures
- Provide dedicated funding and grants for long-term water quality/supply planning and wastewater treatment needs for the region's cities, towns and counties to improve infrastructure and enable local governments to meet increasingly stringent water quality and stormwater requirements
- Continued funding for the Clean Water Management Trust Fund
- Passage of the one billion dollar state water bond with a prerequisite that conservation be a requirement of grant recipients
- Regional councils to develop and implement multi-jurisdictional water resource management planning and programs in every region of the state through the cooperation of local governments, water users, and other stakeholders. (Regional Councils will seek an appropriation of \$1.4 million in 2009 and will work with DENR and other agencies to secure this funding and will support other legislation that fosters regional planning for water infrastructure.)

### **HIGH PRIORITIES**

**School Funding Needs:** Triangle J supports legislation that establishes adequate and reliable funding of public schools in North Carolina that matches needs, resources, and mandates, along with efforts to restore the ability of school districts to receive state sales tax refunds or exemptions. The region will support legislation that reverses the existing and continuing trend of insufficient operational and capital funding for public schools, and will oppose the substitution of lottery funds for the School Capital Construction Fund (ADM). Triangle J will further seek legislation to establish a Legislative Study Commission on a phased increase in the mandatory school age limit from 16 to 18.

**Growth Management Strategy:** Triangle J supports legislation that expands local land use tools, protects local land use authority and encourages state/regional/local cooperation to achieve sound growth rather than state mandates. The region will support the addition of local government appointees to the Legislative Oversight Committee established as a follow up to the state's Legislative Study Commission on Smart Growth, and will support the use of pilot projects as a means to demonstrate the effectiveness of incentive based planning. The local land use tools supported under such legislation would include inducements such as transfer of development rights, inclusionary zoning and housing programs, and expanded local revenue sources for community and regional infrastructure. Triangle J supports state funding for mixed income housing opportunities, environmental programs, open space/farm land, rural economic development, downtown/main street development, and other economic development incentives.

**Air Quality:** Triangle J supports legislation to promote financial strategies for efforts that will reduce greenhouse gases, promotes clean air, and assist state and local government to meet attainment of EPA standards. The region supports linkage of air quality to growth management, transportation, and public health strategies to promote the use of alternative fuels and technology, avoid the adverse economic effects of pollution, and secure energy independence. Triangle J supports legislation that implements the "Air Quality Policy" recommended by the N.C. Joint Regional Forum, and the establishment of an Air Quality Trust Fund.

**Homeland Security and Regional Emergency Preparedness:** Triangle J supports legislation for the following Homeland Security and Regional Emergency Preparedness initiatives:

- Provide planning services for homeland security on a regional basis, and the funding of city and county needs for regional emergency preparedness
- Leadership and affirmative action from the Governor's Office, the N.C. Division of Emergency Management, and the Department of Crime Control and Public Safety for the resources necessary to assure adequate "threat assessment", sufficient communications capabilities, evacuation planning, the necessary training associated with Homeland Security, and implementation of the Criminal Justice Information Network (CJIN)
- Stronger regulatory control requiring disclosure of hazardous and toxic waste at all sites, both temporary and permanent

**Indigent and Uninsured Health Care Delivery Costs:** Triangle J seeks legislation to establish a legislative study commission to develop recommendations on the state's health care delivery system and the needs of the uninsured population.

**Immigration:** Triangle J supports legislation to establish a legislative study commission to develop recommendation on the effects of documented and undocumented immigration upon municipal and county services and how to address the many challenges these demands on local government services create.

## **OTHER PRIORITIES**

**Aging and Long Term Care Needs for the Older Population:** Triangle J supports efforts to recognize the right of every North Carolina resident to have access to health care, and the restoration of Area Agency on Aging funding to the level available in 2001. Triangle J further supports legislation that:

- Provides support to address workforce shortages of direct care workers trained and paid to assist those in need of long term care
- Allow consumers to make informed decisions about nursing home placement
- Provides for improved access of older adults to dental care services, including support for the special care dental delivery model using mobile care units to serve long-term care facilities and senior centers

**Mixed Income Housing:** Mixed Income housing, as an element of land use planning and growth management, is key to quality of life in the region. Triangle J supports legislation that appropriates recurring funds for the North Carolina Housing Trust Fund to provide new home ownership opportunities, along with affordable rental homes for the disadvantaged.

**Economic Development:** Triangle J supports legislation providing for state cooperation with the region's Foreign Trade Zone activities as a link to the global trade market to assure continued economic vitality. Triangle J also supports regional transit as an important part of the region's economic development strategy. Triangle J supports legislation that creates a state policy for alternative energy job creation and independence through business incentives, and the use of North Carolina's universities and their research capabilities.

**Open Space:** Triangle J supports funding of the state's One North Carolina Naturally Initiative, along with other open space and green space concerns, inclusive of increased funding for farm land preservation and other similar economic development activities. Triangle J supports the Land for Tomorrow Initiative and its proposal for state conservation of land and water resources.

**State LRO Funding:** Triangle J supports legislation to increase annual funding for North Carolina's seventeen regional councils from @ \$50,000 per region to \$100,000 per region to carry out regional planning and economic development activities for local government.

**Public Duty Doctrine:** Triangle J supports legislation to restore application of the "Public Duty Doctrine" to local governments.

### **Defensive Goals and Priorities**

**Withholding of Local Funding:** Triangle J strongly opposes the withholding of local government funds to balance any shortfalls in the state budget.

**Franchising Authority:** Triangle J opposes legislation to further weaken or eliminate the ability of local government to exercise franchise authority and/or interfere with the ability of local government to protect its public rights-of-way and property.

**Tax Assessment Authority:** Triangle J supports current statutory authority allowing local governments to assess property for purposes of ad valorem taxation at full market value, therefore, negating any need for legislation that would exempt builders "inventory".

**Solid Waste:** Triangle J opposes any legislation to further weaken the authority and/or ability of local government to operate and administer Solid Waste services.

**Aging:** Triangle J opposes legislation to consolidate Area Agencies on Aging as proposed by the federal government.

**Transportation:** Triangle J opposes the mandate of new Transportation Authority for local government without the necessary revenue sources to support these new responsibilities.



# **PACE Finance: Innovative Funding to Accelerate the Energy Retrofit of America's Buildings**

October, 2009



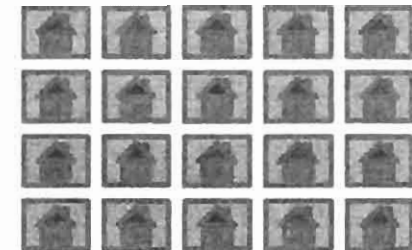
## America's Building Stock

- Nearly 40% of our nation's energy usage and greenhouse gas emissions (GHG) are from buildings and homes



	<u>Commercial</u>	<u>Homes</u>
Number of Units	5 million	100 million
Approximate % of US Energy Consumption	20%	20%
Number of Units Per 1% of Nation's Energy Usage	250,000	5 million

- Each building retrofit = 20 Homes



## **PACE Finance: Innovative Funding to Accelerate America's Retrofit**

**Question:** How do we create a market for retrofit finance that can dramatically accelerate the energy retrofits of America's homes and buildings?

**Answer:** Property Assessed Clean Energy ("PACE") Finance

### **Major Catalysts:**

- Fannie Mae and Freddie Mac support PACE programs with clear guidelines that are not administratively burdensome and that respect tax treatment of liens
- To scale PACE, in the future it might be helpful for the federal government to provide credit guarantees
  - Low to no fiscal cost to U.S. taxpayers
  - High probability of program success



## What is PACE Finance?

**PACE = Property Assessed Clean Energy Finance**

**Definition:** Property owners borrow money from a newly established “municipal financing district” to finance energy retrofits (efficiency measures and micro renewable energy) and repay over 20 years through annual special tax on property tax bill

**Innovation:** Innovative financing that dramatically improves the economics of energy retrofits (efficiency measures and micro renewable energy) due to the elimination of the upfront cost barrier for property owners, the long term nature of the repayment period, and structuring the payment as annual property tax surcharges

### Typical Steps:

1. State enabling legislation allows for special municipal taxing districts
2. Municipality (city or county) creates a special “PACE” district
3. “PACE” district issues a “PACE” master bond
4. Commercial/residential real estate owners apply for PACE funds to install hyper energy efficiency measures and renewable energy production (e.g. solar)
5. PACE funding treated as senior “property tax lien” and repaid by real estate owner over 20 years as annual property tax surcharge



## The Advantages of PACE Finance:

### 1. Our Nation:

- Large job creation
- Accelerates movement toward energy independence & reduces GHG emissions
- Very low fiscal cost & high probability of success

### 2. Property Owner:

- Elimination of “up-front” cost barrier
- Positive cash flow on retrofits (annual savings > cost) which frees up household income for mortgage payments
- Lower energy bills and lower vulnerability to spikes in energy prices

### 3. States, Cities & Municipalities:

- Immediate job creation
- No credit or general obligation risk: Obligation is liability of real estate owner
- Greenhouse gas reductions/energy independence
- Opt in: Only those real estate owners who opt in pay for it

### 4. PACE Lender:

- Super senior tax lien with virtually no risk of capital impairment
  - Historical loss rates on property tax liens are de minimis
    - 97% of property taxes are current
    - Property tax losses are less than 1%

### 5. Existing Mortgage Lenders:

- Improved borrower cash flow reduces mortgage default risk
- Increased collateral value
- PACE senior lien in a foreclosure is de minimis: only past due tax lien becomes due, typically less than 1% of mortgage/home value (see appendix 2)



## **PACE: States & Municipalities Help Lead the Way**

- **Existing statutory ability to launch PACE programs:**
  - Florida & Hawaii
- **In the last 12 months, these states passed enabling legislation for PACE programs:**
  - California (AB 811)
  - Colorado (HB 08-1350)
  - Illinois (SB 583)
  - Louisiana (SB 224)
  - Maryland (HB 1567)
  - Nevada (SB 398)
  - New Mexico (HB 572)
  - Ohio (BH 1)
  - Oklahoma (SB 668)
  - Oregon (HB 2181 & HB 2626)
  - Texas (HB 1391 & HB 1937)
  - Vermont (H 446)
  - Virginia (SB 1212)
  - Wisconsin (AB 255)

2010: Many more PACE enabled states anticipated



## PACE Industry Key Catalysts

### 1. Fannie Mae/Freddie Mac ("the GSE's") cooperate with PACE program development

- Clear Guidelines: It is imperative that the GSE's provide clear guidelines that are not administratively burdensome and that they respect the senior tax structure of PACE liens
  - Burdensome administration, legal requirements, or underwriting criteria would eliminate PACE programs and potentially the best opportunity to rapidly retrofit America's built environment
- Best Practices & Quality Control Assurance:
  - The longer term success of PACE programs will be ensured through "Best Practice" and "Quality Control" standards.
    - The Standards need:
      - To start with initial flexibility given infancy of PACE program industry (e.g. shortage of auditors)
      - To be developed in conjunction with feedback from municipalities to ensure that the standards can be efficiently administered at the local level



## PACE Industry Key Catalysts:

2. To scale PACE on an accelerated basis, federal credit guarantees would be helpful

- PACE Finance Main Obstacle: Limited bond buyers and high financing cost
  - PACE bonds are taxable
  - The market for taxable municipal bonds is illiquid, small and expensive
- Federal Appeal: Senior lien status results in virtually no risk/cost to federal government and taxpayer. Purpose of credit guarantee is to jump start new asset class

### Bond Market Summary:

<u>(10 yr duration +)</u>	<u>Treasury Bonds</u>	<u>Tax-Exempt Munis</u>	<u>Taxable Munis</u>	<u>Small Taxable Munis</u>
Market Size	\$540 billion	\$330 billion	\$6 billion	?
Rate	3.8%	4.5%	7%+	?

Solution: Department of Energy ("DOE") or Treasury Department credit guarantee for PACE bonds

- PACE bonds/liens now viewed as treasury bond surrogate
  - PACE bond issuers and buyers benefit from deeply liquid, large treasury bond market - \$500 billion + market
- Issuer/Bond Buyer Advantage:
  - Interest rates reference the treasury bond market
- Federal Advantage:
  - Serves as the catalyst for our nation's retrofit program and has virtually no long term credit risk/cost to taxpayers



## Summary:

- Over the past several decades America's market for energy retrofit finance has failed to develop
- PACE Finance has the potential to finance and dramatically accelerate our nation's energy retrofit
- The key catalysts for acceleration and success include:
  - GSE cooperation – seniority must be honored and administration must be reasonable
  - Federal credit guarantees to help new asset class develop rapidly
- In the past year 14 states have passed PACE enabling legislation with many more to come
- To ensure PACE programs success, "Best Practices" and "Quality Assurance" standards must be developed in partnership with municipalities
- All key stakeholders can benefit from PACE finance:
  - Our nation
  - Homeowners and building owners
  - States, cities & municipalities
  - Existing mortgage lenders
  - New PACE lenders

## Appendix 1: Anticipation of PACE Criticisms

1. *"PACE increases risk to GSE's due to senior status of PACE liens."*

Response:

- PACE lien seniority in foreclosure represents less than 1% of home value/GSE mortgage value
- PACE "Best Practices" should require states to have "no due upon sale" clauses for PACE liens. Essentially, the PACE lien does not accelerate upon foreclosure.

2. *"PACE" increases risk to borrower's/GSE's due to increased leverage"*

Response:

- PACE liens should be either positive net present value or cash flow positive in year 1
  - If they are cash flow positive in year 1, this frees up homeowner cash flow to make mortgage payments and reduces risk of default
  - If they have positive net present value, then this should result in increase in the value of the collateral

3. *"PACE programs run the risk of consumer fraud"*

Response:

- Best practice and quality assurance programs are being developed in conjunction with municipality feedback (see best practice handouts) to help ensure the integrity of PACE programs

## Appendix 2: Analysis of PACE Tax Lien Seniority to Existing Mortgage

**Conclusion:** The amount of seniority to the existing mortgage created by a PACE lien will typically represent less than 1% of home value

- This is because in most PACE states, upon foreclosure, only the delinquent tax lien gets paid (not the whole PACE loan) while the homeowner assumes the remaining balance

**Assumptions:**

- Home Value \$300,000
- Mortgage 250,000
- PACE Lien 15,000 (5% of home value)
- Annual PACE 1,392 (7% rate, 20 year amortization)
- Property Surcharge
- Average Period Between Delinquency and Foreclosure Less than 12 months
- Assume 1 year PACE surcharge is delinquent and paid ahead of the mortgage:
  - » Senior Payment: \$1,392
  - » % of Home Value: .5%
  - » % of Existing Mortgage: .6%

# RENEWABLE FUNDING



## Property Assessed Clean Energy (PACE) Enabling Legislation

### Ten Key Components of PACE Legal Authority

Enabling legislation will vary by state, depending on existing state law. Please consider the following policy components when drafting legislation. However, if more guidance is needed, please contact Annie Carmichael at [annie@votesolar.org](mailto:annie@votesolar.org) or 415-817-5063 with specific questions.

**Policy Component #1: Identify existing financing & assessment authority within state statute.** Research into the state statutory law can determine whether local governments have existing authority to finance improvements and to impose assessments or special taxes against property that benefits from such improvements. If such authority exists, it is generally preferable to use such existing structures and amend existing statutory provisions to provide for the specific aspects of PACE financing, if necessary. If no such structure exists or if amendments to existing structures are too cumbersome, stand-alone PACE authority can be drafted.

**Policy Component #2: Ensure that assessments are secured by liens on the property benefitted.**

A key feature of PACE is that assessments are secured via a lien on the property benefitted. It is preferable to use existing procedure for securing, recording, collecting other local government assessments and taxes, and handling delinquencies. Typically, the assessment or special tax lien is of the same priority as other property tax and assessment liens. It is preferable that the lien not accelerate in the event of foreclosure or transfer of ownership, and that the lien transfer to the next property owner, if this is not already provided under existing state law. We recommend that details regarding default be specified in local government ordinances or policies, rather than in state statute.

**Policy Component #3: Establish the mechanism for creation of PACE financing districts and programs.**

The improvement financing and assessment authorizing statute typically specifies the procedure for establishing a district or program. This process can be simple or cumbersome. In some jurisdictions the local city council or county board of supervisors can pass a city ordinance creating such districts by a simple majority vote, though a public hearing is often required. However, some states require a petition or vote of a majority of property owners or registered voters. It is less cumbersome if the financing district or program is established by the governing body of local government entity, rather than through a ballot initiative or popular election.

**Policy Component #4: Authorize financing of improvements on private property.**

Enabling legislation should authorize the financing of improvements on residential, commercial



and industrial private property. It is important to review state constitutional law to ensure that PACE programs are properly authorized.

**Policy Component #5: Authorize the financing of energy efficiency and renewable energy improvements.**

Existing state law local government improvement authority often specifies the types of projects that may be financed by the local government. If specific types of projects (e.g. sidewalks, parks, sewers) are enumerated, this list should be expanded to include energy efficiency, renewable energy, and water conservation improvements. We recommend choosing broad and flexible definitions that do not require state statutory amendments to adapt to technological change. If examples of specific clean energy technologies are provided, lists should not be exclusive (i.e. use the phrase "including, but not limited to").

**Policy Component #6: Legislative findings that improvements are in the public interest.**

PACE enabling legislation should include a legislative findings section noting that local government financing of renewable energy, energy efficiency and water conservation projects has a valid public purpose and is in the public interest. The public benefits of such improvements, such as energy security, local job creation, clean air, and climate change mitigation are well documented.

**Policy Component #7: Create opt-in assessment feature.**

The PACE financing authority also must include an "opt-in" feature through which willing and interested property owners voluntarily elect to receive financing and have assessments made against their property. State law should clarify that financing is not to be provided and assessments are not to be made unless property owners first consent in writing. This opt-in feature does not typically appear in existing local government improvement financing authority. Typically, such programs only authorize improvements that result in shared benefit among all property owners within that contiguous geographic area, and tax all property owners within that geographic area. Under the PACE finance model, however, only property owners who choose to participate join the district or program and then receive financing and incur assessments against their property. Existing state law usually needs to be amended to provide that financing and assessments are contingent on property owner approval.

**Policy Component #8: Authorize Bonding and the use of bonds or grants to finance improvements.**

State law should authorize local governments to issue and sell bonds. This is perhaps the most complicated component of enabling legislation, and policy makers should consult with local bond counsel to determine whether additional statutory provisions relating to debt are required. In general, we recommend that state statute not include specifics regarding interest rates, administrative fees and other details, and instead allow local governments to supply such details in ordinances or policies implementing PACE programs. Also note that enabling legislation should provide cities and counties authority to accept federal, state and local government grants and loans to provide up front financing for creating and/or administering a PACE program.

**Policy Component #9: Enabling statewide or multi-jurisdictional PACE programs.**

PACE legal authority should authorize groups of cities and counties and joint powers authorities to coordinate under a single program or financing district to allow for greater economies of scale in the financing and administration of PACE programs.

**Policy Component #10: Bonds not backed by full faith and credit of local/state government.**

It is preferable that debt issued to finance PACE improvements not be a general obligation or backed by the full faith and credit of the local or state government, but instead be secured by the assessment or tax lien on the benefitted property.

**Key policies to avoid as they make PACE programs ineffective:**

- 1. Treating PACE assessments as junior to tax assessments, pari passu or junior to mortgages** [[link to Barclays memo on PACENow](#)]
- 2. Having PACE assessments be general obligation/credit risk for municipalities**  
One of the great advantages of PACE is that it presents no credit risk to municipalities.
- 3. Requiring that PACE programs be funded with monies from the federal government.**  
PACE programs should be funded with private capital and not constrained by the small monies available from government programs.

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