

To: Katie Sutton
Jennifer Beardsley
From: John Rao
Date: February 2, 2017
Re: Comments to Montana Draft PACE Bill

Based on your request that we discussed yesterday, I am providing this analysis of the Montana draft PACE bill and suggestions for how the bill might include additional consumer protections.

1. Section 7 of the draft bill provides that PACE loan assessments will have subordinate lien status. This is helpful and should be retained. Vermont, Maine, Oklahoma, New Hampshire and Rhode Island currently provide for this in their enabling statutes.
2. Section 5 of the draft bill, under “Elements of a program plan,” provides that a “residential project with an estimated cost greater than \$25,000 or a commercial/industrial project with an estimated cost greater than \$100,000 must have an energy analysis be completed before project implementation, and that the project plan must include estimated saving calculations and must be certified and stamped by a Montana-licensed engineer or architect.” This provision is helpful but should be amended to apply to all residential projects regardless of the dollar amount of the estimated cost. Also, the bill should clarify that the certification of estimated energy savings should be performed by an independent entity or individual who is not the contractor or administrator involved with the contract.
3. Section 5 should be amended to require the local government plan to include regulations or guidelines to identify which energy efficiency and renewable energy measures are cost-effective and will be eligible for PACE financing, rather than delegating this responsibility to companies or third parties that administer PACE programs. PACE loans should be limited to these cost-effective measures.
4. The local government plan should also require that, prior to entering into a PACE loan, low-income Montana households must be screened for eligibility for the free low-income Weatherization Assistance Program and other no- or low-cost programs.
5. Section 5(1)(h)(i) of the draft bill provides that the local government plan must include “credit criteria requirements for owners of record and description of the underwriting process.” For residential PACE loans, this should be amended to specifically require that the underwriting process must include consideration of the homeowner’s ability to repay the PACE loan and to fulfill all other financial obligations that are repaid through contractual assessments. The standards provided under the Truth in Lending Ability to Repay rule can be adopted, which consider the homeowner’s income and expenses.

6. Section 5(1)(h)(v) of the draft bill lists certain requirements of the terms and conditions to be included in a model contract between the local government and record owner. For residential contracts, the list of contract requirements in the bill should also include the following:
 - a. Before work on a home begins, the PACE loan program must obtain independent verification that the consumer signed the contract, understands the costs and risks, and was offered financial counseling.
 - b. The contract should give the homeowner the right to cancel the transaction for three business days after they have signed the contract, received the financing estimate and disclosure, or received the notice of right to cancel, whichever is latest. It should also specify that work may not begin until after this three-day period has expired.
 - c. Contracts should not be entered into using electronic signatures. In addition to providing loan documents and information to homeowners in electronic form, a paper copy of all PACE loan documents must be provided to the homeowner.
 - d. The terms of the PACE financing must be based on a fixed-rate, fully amortizing loan.
 - e. There should be no penalty or premium for prepayment of the outstanding balance of an assessment if the balance is prepaid in full.
 - f. All contracts should include in at least ten point, bold face, type the Federal Trade Commission's Preservation of Consumers' Claims and Defenses Notice, as follows: "ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."
 - g. A requirement that the residential contract may not include a provision requiring that disputes be resolved through mandatory arbitration. Such arbitration clauses are prohibited in mortgage contracts, a protection under federal law that was implemented after the mortgage crisis.
7. Section 5(1)(g)(i)(C) of the draft bill provides that "upon completion of the project, the contractor submit to the unit of local government written verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended." This is helpful only if the written verification is provided by an independent, third-party rather than the contractor. Also, the bill

should state that the contractor shall not be paid until the independent written verification has been submitted to the local government.

8. Section 5(e) of the draft bill permits the local government plan to include a reserve fund or funds to be used as security for bonds or notes. The bill should require the establishment of a homeowner protection fund for those injured by contractors.
9. With respect to single-family residential property, the bill should specify that the local government plan must comply with the directives or guidelines issued by the Federal Housing Administration and the Federal Housing Finance Agency on or after January 1, 2016, relating to property assessed clean energy financing.
10. With respect to single-family residential property, the bill should specify the maximum amount of assessments that a homeowner may incur. For example, the bill could state that the total amount of assessments shall not exceed more than 15 percent of the assessed value of the property, and that the combined amount of the assessment plus any outstanding mortgage obligations for the property shall not exceed 90 percent of the assessed value of that property.