



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

Senate Bills 302 and 303 (as enacted)

**PUBLIC ACTS 106 & 107 of 2023**

Sponsor: Senator Darrin Camilleri (S.B. 302)

Senator Kristen McDonald Rivet (S.B. 303)

Senate Committee: Energy and Environment

House Committee: Energy, Communications, and Technology

Date Completed: 3-12-24

**RATIONALE**

A property assessed clean energy (PACE) program allows certain property owners to contract with third-party providers to build or retrofit clean energy projects on their property. Property owners may finance these projects through assessments placed on the property. According to testimony before the Senate Committee on Energy and Environment, PACE programs have successfully promoted tailored and economically sustainable clean energy projects since the Act's enactment a decade ago; however, some people believe that the Act is too restrictive, and so it was suggested that the Act's scope be expanded to include more eligible properties and projects and that certain project requirements be deleted.

**CONTENT**

**Senate Bill 303** amended the Property Assessed Clean Energy Act to do the following:

- **Authorize a local unit of government to contract and finance for an environmental hazard project.**
- **Authorize a record owner of agricultural property to enter a PACE program.**
- **Extend provisions that apply to energy projects to environmental hazard projects and provisions that apply to record owners of commercial and industrial property to record owners of agricultural property.**
- **Specify that a local unit of government is responsible for removing a lien on a property assessed under a PACE program.**
- **Include improved public health and protection against climate hazards and other environmental hazards among the list of essential public and governmental services that justify a local unit of government's issuance of bonds or notes under a PACE program.**

**Senate Bill 302** amended the Property Assessed Clean Energy Act to do the following:

- **Specify that a preliminary PACE program report may conduct a project baseline energy audit *or* a baseline energy model, instead of only the former.**
- **Allow a record owner to waive a requirement that a contractor guarantee to a record owner that the project will achieve a savings-to-investment ratio greater than one and agree to pay the record owner, on an annual basis, any shortfall in savings below this level, for projects financed by over \$250,000 in assessments.**
- **Exempt a new construction energy project from the above provision.**
- **Require, for a new construction energy project, a report to include a requirement that the building or other structure exceeds applicable requirements of the Michigan Uniform Energy Code, Parts 10 and 10a of the Construction Code, and specified rules under the Michigan Administrative Code.**

The bills took effect February 13, 2024.

### **Senate Bill 303**

#### Definitions

The bill established the definition of "environmental hazard project" as the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to address environmental hazards, including measures to do any of the following:

- Mitigate lead, heavy metal, or PFAS contamination in potable water systems.
- Mitigate the effects of floods or drought.
- Increase the resistance of property against severe weather.
- Mitigate lead paint contamination.

Previously, "anaerobic digester" meant a device for optimizing the anaerobic digestion of biomass for the purpose of recovering biofuel for energy production. The bill amended the definition to mean a facility that uses microorganisms to break down biodegradable material in the absence of oxygen, producing methane and an organic product.

"Anaerobic digester energy system" means an anaerobic digester and the devices used to generate electricity or heat from biogas produced by the anaerobic digester or to store the biogas for the future generation of electricity or heat. The bill modified this definition to specify that an anaerobic digester energy system generates electricity or heat from methane.

"New construction energy project" means an energy project that occurs at a newly constructed building or other structure or that consists of significant modifications to an existing building or other structure.

Previously, "renewable energy resource" meant a resource that naturally replenishes over a human, rather than a geological, time frame and that is ultimately derived from solar power, waterpower, or wind power. Under the bill, the term means a resource that naturally replenishes over a human, rather than a geological, time frame whose conversion to a usable form of energy minimizes the output of toxic materials.

#### Authorization of Environmental Hazard Project Financing

Generally, the Act authorizes a local unit of government to establish a PACE program and create districts under the program. The Act allows a local unit of government to enter into a contract with the record owner of property within a district to finance or refinance one or more energy projects on the property. The contract may provide for the repayment of the cost of an energy project through assessments upon the property benefited. The financing or refinancing of an energy project may include the cost of materials and labor necessary for the energy project and the amount of permit fees, inspection fees, application and administrative fees, bank fees, or any other fees that may be incurred by the record owner for the installation.

Previously, the Act allowed for the contracting and financing of *only* energy projects. Under the bill, a local unit of government also may contract and finance for an environmental hazard project. The bill achieves this by applying all the following requirements of a PACE program for an energy project to a PACE program for an environmental hazard project.

Previously, "energy project" meant the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system

or anaerobic digester energy system. The bill modified the definition to remove the word "improvement" and include the *replacement* of a renewable energy system or anaerobic digester energy system. The term "project" means an environmental hazard project or an energy project.

Additionally, the bill amended the definition of "property", allowing more record owners to contract with a local unit of government in a PACE program. Previously, "property" meant privately owned commercial or industrial real property located within the local unit of government. Under the bill, "property" means commercial, industrial, or agricultural property.

Unless otherwise specified, provisions below also apply to environmental hazard projects and to record owners of agricultural property.

### PACE Program Establishment

To establish a PACE program, a governing body of a local unit of government first must adopt a resolution of intent that includes all the following:

- A finding that the financing of energy projects is a valid public purpose.
- A statement of intent to provide funds for energy projects, which may be repaid by assessments on the property benefited, with the agreement of the record owners.
- A description of the proposed arrangements for financing the program.
- The types of energy projects that may be financed.
- Reference to a report on the proposed program and a location where the report is available (see Senate Bill 302).
- The time and place for a public hearing on the proposed program.

Secondly, the governing body must hold a public hearing at which the public may comment on the proposed program, including the report. Thirdly, the governing body must adopt a resolution establishing the program and setting forth its terms and conditions, including all the following:

- Matters required to be included in the program report.
- A description of aspects of the program that may be amended without holding a new public hearing and aspects that may be amended only after a new public hearing is held.

The governing body may amend a PACE program by resolution. Before adopting the resolution, the governing body must hold a public hearing if required.

### Imposing an Assessment

A local unit of government may impose an assessment under a PACE program only in accordance with a written contract entered into with the record owner of the property to be assessed. Before entering into a contract with the record owner under a program, the local unit of government must verify that no tax, special assessment, water or sewer charge, or assessment for another project under a PACE program is delinquent with respect to the property.

An assessment imposed under a PACE program, including any interest on the assessment and any penalty, constitutes a lien against the property on which the assessment is imposed until the assessment, including any interest or penalty, is paid in full. When the assessment, including any interest and or penalty, is paid, the lien must be removed from the property. The bill specifies that the local unit of government would have to remove the lien.

A local unit of government may issue bonds or notes to finance energy projects under a PACE program. Bonds or notes issued under the Act must further essential public and governmental purposes, including reduced energy costs, reduced greenhouse gas emissions, economic stimulation and development, improved property valuation, and increased employment. The bill added to these public and governmental purposes improved public health and protection against climate hazards and other environmental hazards.

### **Senate Bill 302**

Under the Act, to establish a PACE program, the governing body of a local unit of government, among other things, must develop a report that includes a plan for raising capital to finance improvements under the program. Previously, this was subject to the Revised Municipal Finance Act. The bill deleted the reference to the Revised Municipal Finance Act, and instead, specified that the requirement is subject to Section 15 of the Property Assessed Clean Energy Act. Section 15 authorizes a local unit of government to issue bonds or notes to finance projects under a PACE program if the bonds or notes further a public and governmental purpose (see Senate Bill 303).

The report also must include, among other things, a requirement that a baseline energy audit be conducted, before an energy project is undertaken, to establish future energy savings. The bill requires the report to include a baseline energy audit *or* baseline energy modeling.

A report for a project financed with more than \$250,000 in assessments must include, among other things, a requirement in the contract for installation of the energy project that the contractor guarantee to the record owner that the energy project will achieve a savings-to-investment ratio greater than one and agree to pay the record owner, on an annual basis, any shortfall in savings below this level. The bill allows a record owner to waive this requirement, and it also exempts new construction energy projects from this requirement.

Under the bill, for a new construction energy project, a report must include a requirement that the building or other structure exceed applicable requirements of the Michigan Uniform Energy Code, Parts 10 and 10a of the Construction Code, and R 408.31059 to 408.31071a and 408.31087 to 408.31099 of the Michigan Administrative Code.

(The Michigan Uniform Energy Code governs the construction of buildings and their performance related to energy usage. For example, the Code establishes requirements for insulation, the positioning of windows and doors in buildings (fenestration), and roofing, but also prescribes processes and fees related to construction, alteration, removal, demolition, and other building operations. Administrative Rule R 408.31071a establishes and regulates criteria for compliance with the Code's requirements related to a residential building's energy efficiency. R 408.31087 establishes and regulates the same criteria for commercial buildings.)

MCL 460.933 et al. (S.B. 303)  
460.939 (S.B. 302)

### **PREVIOUS LEGISLATION**

*(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)*

Senate Bills 303 and 302 are similar to House Bills 5011 and 5012, respectively, of the 2021-2022 Legislative Session. The House Committee on Energy reported the bills, but they received no further action.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Expanding the scope of commercial PACE (C-PACE) will help more Michigan businesses lower their costs and their carbon footprint, benefiting the State's economy and climate goals. According to testimony before the Senate Committee on Energy and Environment, the organization Lean and Green Michigan has helped finance 67 C-PACE projects, representing an investment of over \$215.0 million in Michigan. Projects such as these have saved Michigan businesses \$332.0 million in energy costs over the past 10 years.<sup>1</sup> They also help achieve the goals of the Michigan Healthy Climate Plan, which center around economy-wide carbon neutrality by 2050, with an interim target of a 52% reduction in greenhouse gas (GHG) emissions by 2030. As of 2019, Michigan's buildings were the third highest GHG contributor after the power and transportation sectors, accounting for 18% of the State's total emissions.<sup>2</sup> As a result, the Michigan Healthy Climate Plan recognized reinvesting in and decarbonizing the State's building stock as a priority. Specifically, it recommended the use of C-PACE, which makes buildings more energy-efficient, as a vital tool in incentivizing private sector capital to participate in the State's decarbonization. The bills expanded C-PACE programs to include further projects that will contribute to the State's building efficiency and made them more accessible to private capital sources. Ultimately, the bills will increase investment in Michigan's environment without sacrificing the State's economic welfare.

### **Supporting Argument**

Senate Bill 302 gives property owners participating in C-PACE more leeway to decide the amount of protection they need. The bill allows property owners the option to waive the requirement that their contractor guarantee that the energy project will achieve a savings-to-investment ratio greater than one and agree to pay the record owner any shortfall in savings below that level annually. According to testimony before the Senate Committee on Energy and Environment, property owners interested in C-PACE projects are often represented by legal and financial advisors and understand the cost, benefits, and risks associating with their participation in a C-PACE program. Reportedly, many find this savings-to-investment guarantee onerous. Accordingly, the bill made this requirement flexible, further empowering property owners.

Legislative Analyst: Nathan Leaman

### **FISCAL IMPACT**

Senate Bill 303 will have no fiscal impact on the State and an indeterminate fiscal impact on local units of government. The bill added to the list of eligible project types. Local government units may assess property taxes on PACE programs and if this assessment covers the cost to the local government, then there will be no fiscal impact. Senate Bill 302 will have no fiscal impact on State or local government.

Fiscal Analyst: Bobby Canell

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<sup>1</sup> Dawson, Gabrielle, "Gov. Whitmer signs bipartisan bills to boost clean energy growth, create jobs & lower energy costs", *News Channel 3*, July 27, 2023.

<sup>2</sup> Michigan Department of Environment, Great Lakes, and Energy, *Michigan Healthy Climate Plan*, p. 41, April 2022.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.