T&E ITEM #1
July 8, 2013

Worksession

MEMORANDUM

July 3, 2013

TO: Transportation, Infrastructure, Energy, and Environment Committee

FROM: Amanda Mihill, Legislative Attorney

SUBJECT: **Worksession:** Bill 11-13, Commercial Property Assessed Clean Energy Program - Established

Bill 11-13, Commercial Property Assessed Clean Energy Program - Established, sponsored by Councilmember Berliner, was introduced on April 23, 2013. A public hearing was held on June 11. There were no speakers.

Bill 11-13 would establish a commercial property assessed clean energy (PACE) program to assist qualifying commercial property owners to make energy improvements and establish a revolving loan fund to provide property owners loans under the Program.

Fiscal and Economic Impact Statements OMB's fiscal impact statement (©8) indicates that Bill 11-13 would have a fiscal impact, but it would depend on the size and scope of the program. According to the statement, DEP cannot implement the program without retaining a consultant to design a program suitable for the County, which would cost $100,000-$150,000. Elements that would contribute to the fiscal impact include financing costs, startup costs (marketing and outreach, develop web infrastructure), and ongoing program costs.

The fiscal impact statement notes that the fiscal impact to the County would be lessened if the commercial PACE program employed owner-arranged or quasi-government financing. A bill that would allow this type of financing was introduced in the 2013 General Assembly session, but was not enacted.

Maryland law. The State does not currently have a commercial PACE program. State law authorizes political subdivisions to establish clean energy loan programs for residential and commercial property owners to finance energy efficiency projects and certain renewable energy projects (©15).

Experience in other jurisdictions. A number of jurisdictions in other areas of the country have adopted commercial PACE programs. According to PACENow, an advocate organization that assists jurisdictions in setting up programs, commercial PACE programs were pioneered in

Boulder County, Colorado and in several local jurisdictions in California. Last year, Connecticut created the first statewide program. Another notable jurisdiction with commercial PACE programs is the District of Columbia. In 2011, Lawrence Berkeley National Lab, the Clinton Climate Initiative, and Renewable Funding released a policy brief on commercial PACE programs (©25).

Correspondence The Greater Washington Commercial Association of REALTORS® sent a letter to the Council with its strong support for Bill 11-13 (©40).

Issues for Committee Discussion

Executive staff policy paper The Executive has not taken a position on Bill 11-13, but Executive staff have prepared a policy paper that discusses the bill and PACE options (©41). This paper raises several issues for consideration to implement a PACE program. The policy paper discusses these best practices and common themes that the Committee may wish to discuss:

- Require lender consent for a PACE assessment on a financed property (Bill 11-13 includes lender consent).
- Allow owner-arranged financing (requires state legislation).
- In principle, energy cost savings should equal financing and project costs.
- Adequate administrative resources to run the program should be provided.
- Energy measurement and verification, which monitors a project's performance over an extended period of time, should be conducted.
- Couple PACE programs with available utility incentives.

This packet contains:	Circle #
Bill 11-13	1
Legislative Request Report	7
Fiscal and Economic Impact Statements	8
State Law	15
Policy Brief	25
GWCAR letter of support	40
Executive staff policy paper	41

F:\LAW\BILLS\1311 Commercial PACE\T&E Memo.Doc

Bill No.	11-13
Concerning:	Commercial Property Assessed Clean Energy Program - Established
Revised:	4/11/2013 Draft No. 1
Introduced:	April 23, 2013
Expires:	October 23, 2014
Enacted:	
Executive:	
Effective:	
Sunset Date:	
Ch. ____, Laws of Mont. Co.	

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Berliner

AN ACT to:
(1) establish a Commercial Property Assessed Clean Energy Program to assist qualifying commercial property owners to make energy improvements;
(2) establish a revolving loan fund to provide property owners loans under the Program; and
(3) generally amend the environmental sustainability law.

By adding
Montgomery County Code
Chapter 18A, Environmental Sustainability
Article 5
Sections 18A-33, 18A-34, 18A-35, 18A-36, 18A-37, and 18A-38

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Article 5 of Chapter 18A (Sections 18A-33, 18A-34, 18A-35, 18A-36, 18A-37, and 18A-38) is added as follows:

Article 5. Commercial Property Assessed Clean Energy Program

18A-33. Definitions.

In this Section, the following words have the meanings indicated:

Commercial or industrial property means any real property other than a residential dwelling with less than five dwelling units.

Commercial Property Assessed Clean Energy Program or *Program* means a program that facilitates energy improvements and requires repayment through a surcharge on the owner's property tax bill.

Department means the Department of Environmental Protection.

Director means the Director of the Department or the Director's designee.

Eligible cost means the net cost of buying or installing an energy improvement, including any part, component, or accessory necessary to operate the improvement or device, less any amount received from a public or private program because the improvement or device is or will be made or installed.

Energy improvement means:

(1) a renovation or retrofitting of qualifying commercial real property to reduce energy consumption; or

(2) the installation of a renewable energy system to service qualifying commercial real property.

Qualifying commercial real property means any commercial or industrial property, regardless of ownership, that meets the qualifications established for the Commercial Property Assessed Clean Energy Program.

18A-34. Commercial Property Assessed Clean Energy Program established.

The Director must create and administer a Commercial Property Assessed

Clean Energy Program.

18A-35. Eligibility; use of funds.

(a) The Director may loan funds to an owner of a qualifying commercial real property to fund eligible costs to make an energy improvement on the property, up to the maximum loan amount set by regulation.

(b) *Eligibility.* To be eligible for a loan under this Program, a property owner must:

(1) have an energy audit or renewable energy system feasibility analysis on the qualifying commercial real property that assesses the expected energy cost savings of the energy improvement over the useful life of the improvement;

(2) provide 30 days' written notice to any existing mortgage holder of the property of the owner's intent to finance the energy improvement under the Program;

(3) obtain the consent of any existing mortgage holder for the loan; and

(4) agree to repay the loan amount borrowed through the County tax bill for that property, as required by Section 18A-36.

(c) *Use of funds for an energy improvement.*

(1) A person may borrow funds for eligible costs to make an energy improvement.

(2) Except as provided in (c)(3), funds must be loaned only for an energy improvement for which the energy cost savings of the energy improvement over the useful life of the improvement exceed the costs of the improvement.

(3) Funds may be loaned for an energy improvement that does not meet the cost criteria in (c)(2) if that improvement is part of a

package of improvements financed under the Program that cumulatively meets that criteria.

(4) Funds may be loaned only for an energy improvement that is permanently fixed to a qualifying commercial real property.

(d) *Disclosure to property owner.* The Director must disclose the following to a property owner:

(1) any cost or risk associated with participating in the Program, including any risk related to the failure of the property owner to pay the loan and;

(2) the interest rate of the loan, including any fees charged to administer the Program, and any risk associated with variable interest rate financing.

(e) *Ability to rescind.* The Director must notify a property owner that the owner may rescind any financing agreement entered into under this Article no later than 3 business days after the agreement is made.

18A-36. Repayment of funds; lien.

(a) The owner of qualifying commercial real property must agree to repay the loan amount borrowed through the County property tax bill for that property.

(b) If the property owner sells the property, the seller must disclose that the buyer must continue to repay the loan through the property tax bill.

(c) The loan amount and any accrued interest constitute a first lien on the real property to which the loan applies until paid. The loan amount and accrued interest are collectable by suit or tax sale like all other real property taxes, to the extent allowed by State law. If the property owner does not pay the loan and accrued interest as required, the property may be certified to the Department of Finance and the lien may be sold at the tax sale conducted by the County.

18A-37. Regulations.

The Executive must adopt regulations under Method (2) to administer the Program, including:

(a) lending standards and priorities;

(b) minimum and maximum loan amounts;

(c) interest rates, terms, and conditions;

(d) application procedures, including necessary supporting documentations;

(e) criteria for adequate security;

(f) procedures to refer applicants to other sources of funds, and to cooperate with other public and private sources of funds;

(g) procedures to ask the Director to reconsider any denial of a loan or any decision on interest rates, terms, and conditions;

(h) procedures for nonpayment or default;

(i) procedures and requirements for post-installation inspection;

(j) disclosure requirements for real estate transactions; and

(k) criteria for loan disbursement.

18A-38. Revolving loan fund.

(1) *Definitions*. In this Section, the following words have the meanings indicated:

Department means the Department of Finance.

Revolving loan fund or *Fund* means the special, nonlapsing fund to finance the Commercial Property Assessed Clean Energy Program established under this Article.

(b) The Fund consists of:

(1) money appropriated in the County budget for the Program;

(2) money received from any public or private source;

(3) interest and investment earnings on the Fund;

(4) repayments and prepayments of principal and interest on loans made from the Fund; and

(5) any other available funds to support the Program.

(c) The Department must:

(1) disburse funds and collect payments for a loan made under the Program; and

(2) maintain loan records and provide an annual report to the Department of Environmental Protection.

Approved:

____

Nancy Navarro, President, County Council		Date

Approved:

____

Isiah Leggett, County Executive		Date

This is a correct copy of Council action.

____

Linda M. Lauer, Clerk of the Council		Date

LEGISLATIVE REQUEST REPORT

Bill 11-13

Commercial Property Assessed Clean Energy Program - Established

DESCRIPTION:	Bill 11-13 would establish a Commercial Property Assessed Clean Energy Program to assist qualifying commercial property owners to make energy improvements and establish a revolving loan fund to provide property owners loans under the Program.
PROBLEM:	Making energy efficiency improvements to commercial buildings can be a cost-effective way to reduce greenhouse gas emissions. However, the lack of accessible financing options is a barrier to many property owners and may prevent them from making these energy efficiency improvements
GOALS AND OBJECTIVES:	To establish a program to provide property owners with a financing option to make energy efficiency improvements to their commercial property, thereby reducing energy costs and greenhouse gas emissions.
COORDINATION:	Departments of Environmental Protection, Finance, and Permitting Services.
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney, 240.777.7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	N/A

BILL 11-13

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ROCKVILLE, MARYLAND

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MONTGOMERY COUNTY

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MEMORANDUM

June 10, 2013

TO: Nancy Navarro, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 11-13, Commercial Property Assessed Clean Energy Program – Established

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:nm

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Michael Coveyou, Department of Finance
Alex Espinosa, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Council Bill 11-13, Commercial Property Assessed Clean Energy Program - Established

1. **Legislative Summary.**

   Bill 11-13 establishes a Commercial Property Assessed Clean Energy (PACE) program to assist qualifying commercial property owners make energy improvements and establishes a revolving loan fund to provide property owners loans under the program.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

   The Bill requires the Director of the Department of Environmental Protection (DEP) to establish a PACE program, which DEP would administer under a future regulation. The Bill would have a fiscal impact but since it does not define the size or scope of the program, it is not possible at this time to determine a specific estimate of changes in County revenues or expenditures. DEP, however, cannot implement the Bill's requirement to establish a PACE program without retaining a consultant with expertise in energy retrofit financing programs, including PACE programs, to design a program for the County. DEP believes a consultant would cost $100,000 - $150,000 based on information from other jurisdictions.

   The extent of additional expenditures required to implement a commercial PACE program depends on the number of projects, their scale, and the method used to finance them. Data is available from commercial PACE programs in other jurisdictions:

Program	Projects Interested	Projects Financed
Washington, DC	12 large, 20 small	One 140 unit residential property valued at $340,000 in final stages of underwriting.
San Francisco	Up to $7 million in projects.	One $1.4 million project.
Connecticut	120 projects, staff estimate 70% convertible to projects	One complete, two near final. Collectively $3.5 million.
Florida	Unknown	0
Sonoma	Unknown	58, but most are small projects

The jurisdictions listed above have utilized a variety of funding techniques to provide the initial capital needed for commercial property retrofits, including:

- Owner arranged, private capital funding: Participants secure private financing and repay loans through the property tax bill.
- Quasi-government program: These programs utilize a quasi-government entity with the authority to issue bonds or secure private financing for projects. The

jurisdiction operates the program and collects loan repayments through the property tax bill.

- Municipal financed programs: These programs derive funding from municipal bonds, revolving load funds, or other appropriated funds. Most commercial programs have transitioned from or abandoned this model due to the large capital costs of most commercial projects.

The table below notes the funding approaches taken by other jurisdictions for commercial PACE programs:

Program	Type of Fund	Initial Funding
Washington, DC	Conduit Bond	$250 million
San Francisco	Private Capital/Owner Arranged	Unlimited, but short term limits due to credit enhancements
Connecticut	Public Benefit Funds/Owner Arranged Financing	$20 million
Florida	Private Funds	$500 million
Sonoma	Treasury/Private Funds	Over $67 million

Currently, State law (Article 24, Section 9-1501 et seq. of the Maryland Annotated Code) prohibits the County from collecting private loan repayments through the property tax bill.

In addition to financing costs, PACE programs in other jurisdictions have both initial startup costs and ongoing program operating costs. Startup funding would be needed to, among other things, prepare program materials, including marketing and outreach; define underwriting standards; and develop web infrastructure. These costs could be recovered through fees added to loans, but most programs have chosen to absorb these costs, at least initially, in order to reduce the cost of the loan to borrowers. Most programs assume ongoing administrative costs will be entirely funded by a surcharge on each loan once the program reaches a certain scale. In addition, most programs use credit enhancements and subsidies to ensure timely payment to lenders or offset losses. Based on information from other jurisdictions, the staff, consultants, and other costs associated with implementing a commercial PACE program could range from $600,000 to $1 million. The table below outlines start-up costs and long-term staffing/consultant support in other jurisdictions:

Program	Implementation Funds	Ongoing FTEs/Consultants
DC	$800,000	1+ consultants
San Francisco	$600,000	2+ consultants
Connecticut	$1 million	2+ consultants (6 to 8 individuals and other specialized consultants as

		needed)
Florida	Unknown	Volunteer commissioners
Sonoma	Unknown	2

A specific cost estimate for a commercial PACE program in Montgomery County cannot be determined until a program is designed, but the information from other jurisdictions provides a range of costs that are possible. A significant factor influencing the fiscal impact would be the source and amount of capital financing for the retrofit projects. An owner arranged or quasi-government financed program would have a smaller fiscal impact on the County, but cannot be implemented at this time because State law (Article 24, Section 9-1501 et seq. of the Maryland Annotated Code) currently prohibits collection of private loan repayments through the property tax bill. A bill in the Maryland General Assembly that would have allowed the tax bill to be used for this purpose passed the Senate during the 2013 session but was not subject to a vote in the House of Delegates prior to the conclusion of the session.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

   See number 2. An initial expenditure of $100,000 - $150,000 would be required for a consultant to design a program. Six-year estimates of revenues and expenditures can be estimated once a program is designed.

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

   Not Applicable.

5. **An estimate of the staff time needed to implement the bill.**

   See number 2 and 3. The startup and program implementation costs may include work by current County staff, but an estimate of staff time needed to implement the Bill cannot be estimated until after a program is designed.

6. **An estimate of costs when an additional appropriation is needed.**

   An appropriation of $100,000 - $150,000 would be required to fund a consultant to design a program as noted above. An additional appropriation would be required to implement the program on an ongoing basis, but the amount would not be known until a program is designed.

7. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   Not Applicable.

8. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Not Applicable.

9. **A description of any variable that could affect revenue and cost estimates.**

   See number 2 above.

10. **Ranges of revenue or expenditures that are uncertain or difficult to project.**

    See number 2 above. While some data is available on commercial PACE programs, sufficient long-term trend data is currently unavailable to accurately estimate revenues and expenditures of a fully functioning commercial PACE program. Program implementation expenditures should be reexamined regularly to ensure the program is fiscally and economically viable.

11. **If a bill is likely to have no fiscal impact, why that is the case.**

    Not Applicable.

12. **Other fiscal impacts or comments.**

    Not Applicable.

13. **The following contributed to and concurred with this analysis:**

    Stan Edwards, Department of Environmental Protection

    Eric Coffman, Department of Environmental Protection

    Robert Hagedoorn, Department of Finance

    Michael Coveyou, Department of Finance

    Alex Espinosa, Office of Management and Budget

    Matt Schaeffer, Office of Management and Budget

Jennifer A. Hughes

Jennifer A. Hughes, Director
Office of Management and Budget

6/10/13
Date

Economic Impact Statement
Bill 11-13, Commercial Property Assessed Clean Energy Program - Established

Background:

This legislation would establish a Commercial Property Assessed Clean Energy Program (Program) to assist qualifying commercial property owners to make energy improvements, establish a revolving loan fund to provide property owners loans under the Program, and amend the environmental sustainability law.

1. **The sources of information, assumptions, and methodologies used.**

   According to the Department of Environmental Protection (Department), the amount of data on the types of projects and commercial property owners eligible for this Program, the costs of the projects, and the reduction in energy costs achieved by the owners are very limited and project/site specific. While there are over 4,270 commercial buildings that encompass 150 million square feet in the County, it is difficult without specific implementation guidelines and the amount of funding to determine with any certainty the economic impact of Bill 11-13.

2. **A description of any variable that could affect the economic impact estimates.**

   To estimate the economic impact with any degree of certainty, the analysis requires the number of potential projects, which will be dependent on the level of funding and other factors. Based on the requirements specified in the bill, at a minimum a project that has been approved should achieve an economic benefit such that the cost savings from a reduction in energy consumption will exceed the cost of the project. This bill would not apply to condominiums. However without specificity on the types of projects to be implemented, it is premature to determine the economic benefits of the bill.

3. **The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.**

   As stated in item #2, the total economic effect will depend on the amount of financing available, the number of projects that are undertaken, the costs of renovating and retrofitting a property, the costs of investing in a renewable energy system and the operating costs of such a system over the life of the system, the reduction of energy consumption and savings from that reduction, and the additional business opportunities and increase in employment by energy consulting and construction companies. The level of detail necessary to ascertain the positive economic effect is limited, and as such, the total economic effect cannot be determined with any degree of certainty.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   Please see item #3

13

5. **The following contributed to and concurred with this analysis**: David Platt and Mike Coveyou, Finance.

For

Joseph F. Beach, Director
Department of Finance

6/5/2013
Date

14

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*** Current through all Chapters Effective January 1, 2013, of the 2012 General Assembly Regular Session, First Special Session, and Second Special Session. ***
*** Annotations through March 7, 2013 ***

ARTICLE 24. POLITICAL SUBDIVISIONS -- MISCELLANEOUS PROVISIONS
TITLE 9. REVENUE AND TAXES.
SUBTITLE 15. CLEAN ENERGY LOAN PROGRAMS.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 24, § 9-1501 (2012)

§ 9-1501. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Bond. -- "Bond" means a bond, note, or other similar instrument that a political subdivision issues under this subtitle.

(c) Chief executive. -- "Chief executive" means the president, chair, mayor, county executive, or any other chief executive officer of a political subdivision.

(d) Political subdivision. -- "Political subdivision" means a county or municipal corporation.

(e) Program. -- "Program" means a Clean Energy Loan Program.

HISTORY: 2009, ch. 743.

NOTES: EDITOR'S NOTE. --Section 2, ch. 743, Acts 2009, provides that the act shall take effect October 1, 2009.

BILL REVIEW LETTER. --Chapter 743, Acts 2009 (House Bill 1567) was approved for constitutionality and legal sufficiency. The surcharge under this bill does not constitute a lien against the property under State law as it was not explicitly created. However, a lien created by local law authorized under this bill must satisfy due process requirements. (Letter of the Attorney General dated May 12, 2009.)

15

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Annotated Code of Maryland

*** Current through all Chapters Effective January 1, 2013, of the 2012 General Assembly Regular Session, First Special Session, and Second Special Session. ***
*** Annotations through March 7, 2013 ***

ARTICLE 24. POLITICAL SUBDIVISIONS -- MISCELLANEOUS PROVISIONS
TITLE 9. REVENUE AND TAXES.
SUBTITLE 15. CLEAN ENERGY LOAN PROGRAMS.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 24, § 9-1502 (2012)

§ 9-1502. Clean Energy Loan Program

(a) Ordinance or resolution. -- A political subdivision may enact an ordinance or a resolution establishing a Clean Energy Loan Program.

(b) Purpose. -- The purpose of the Program is to provide loans to:

(1) Residential property owners, including low income residential property owners, for the financing of energy efficiency and renewable energy projects; and

(2) Commercial property owners for the financing of:

(i) Energy efficiency projects; and

(ii) Renewable energy projects with an electric generating capacity of not more than 100 kilowatts.

(c) Surcharge on tax bill. --

(1) The Program shall require a property owner to repay a loan provided under the Program through a surcharge on the owner's property tax bill.

(2) A surcharge shall be limited to an amount that allows the political subdivision to recover the costs associated with issuing bonds to finance the loan and costs associated with administering the Program.

(d) Assumption of obligation. -- A person who acquires property subject to a surcharge under this section, whether by purchase or other means, assumes the obligation to pay the surcharge.

(e) Eligibility requirements. --

(1) An ordinance or resolution enacted under subsection (a) of this section shall provide for:

(i) Eligibility requirements for participation in the Program, including eligibility requirements for:

1. Energy efficiency improvements and renewable energy devices; and

2. Property and property owners; and

(ii) Loan terms and conditions.

(2) Eligibility requirements under paragraph (1) of this subsection shall include a requirement that the political subdivision, in a manner substantially similar to that required for a mortgage loan under *§§ 12-127, 12-311, 12-409.1, 12-925, and 12-1029 of the Commercial Law Article*, give due regard to the property owner's ability to repay a loan provided under the Program.

HISTORY: 2009, ch. 743.

Annotated Code of Maryland

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*** Annotations through March 7, 2013 ***

ARTICLE 24. POLITICAL SUBDIVISIONS -- MISCELLANEOUS PROVISIONS
TITLE 9. REVENUE AND TAXES.
SUBTITLE 15. CLEAN ENERGY LOAN PROGRAMS.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 24, § 9-1503 (2012)

§ 9-1503. Bonds

(a) Issuance. -- A political subdivision may issue bonds for the purpose of financing loans made through the Program.

(b) Adoption. -- To issue a bond, a political subdivision shall adopt an ordinance or a resolution that specifies the maximum principal amount of the bond.

(c) Bond specifications in ordinance or resolution. -- As the political subdivision considers appropriate to effect the Program, the ordinance or resolution may:

(1) Specify the items listed in subsection (d) of this section;

(2) Authorize the finance board of the political subdivision to specify those items by resolution or ordinance; or

(3) Authorize the chief executive of the political subdivision to specify those items by executive order.

(d) Bond specifications in general. -- For each issuance of a bond, the political subdivision may specify:

(1) The principal amount;

(2) The interest rate or, for floating or variable rates of interest, the method to determine the interest rate;

(3) The manner and terms of sale, including whether by competitive or negotiated sale;

(4) The time of execution, issuance, and delivery;

(5) The form and denomination;

(6) The source, manner, times, and places to pay principal or interest;

(7) Conditions for redemption before maturity;

(8) The purposes for which proceeds may be spent;

(9) The source of security; and

(10) Other provisions that the governing body of the political subdivision determines are necessary or desirable to effect the Program.

HISTORY: 2009, ch. 743.

4 of 7 DOCUMENTS

Annotated Code of Maryland

*** Current through all Chapters Effective January 1, 2013, of the 2012 General Assembly Regular Session, First Special Session, and Second Special Session. ***
*** Annotations through March 7, 2013 ***

ARTICLE 24. POLITICAL SUBDIVISIONS -- MISCELLANEOUS PROVISIONS
TITLE 9. REVENUE AND TAXES.
SUBTITLE 15. CLEAN ENERGY LOAN PROGRAMS.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 24, § 9-1504 (2012)

§ 9-1504. Bonds -- Conditions of issuance

(a) Legislative intent. -- The General Assembly intends that general obligation debt may be incurred by issuing bonds if the purposes for the debt include the purposes for issuing bonds under this subtitle.

(b) Issuance of bonds to finance loans. -- Subject to subsection (c) of this section, a political subdivision may issue bonds to finance loans made under the Program in accordance with the procedures of the political subdivision for authorization to sell and issue bonds.

(c) Pledging of full faith and credit. -- A bond issued in accordance with an ordinance or a resolution that pledges the full faith and credit of a political subdivision is subject to:

(1) Any applicable requirements of the Maryland Constitution and the political subdivision's charter and laws on referendum for the issuance of general obligation debt; and

(2) Each limitation imposed by public general law, public local law, or charter on general obligation debt of the political subdivision.

HISTORY: 2009, ch. 743.

20

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*** Annotations through March 7, 2013 ***

ARTICLE 24. POLITICAL SUBDIVISIONS -- MISCELLANEOUS PROVISIONS
TITLE 9. REVENUE AND TAXES.
SUBTITLE 15. CLEAN ENERGY LOAN PROGRAMS.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 24, § 9-1505 (2012)

§ 9-1505. General provisions regarding bonds

(a) Form. -- A bond:

(1) May be in bearer form;

(2) May be registrable as to principal alone or as to both principal and interest; and

(3) Is a "security" under *§ 8-102 of the Commercial Law Article*, whether or not the bond is one of a class or series or is divisible into a class or series of instruments.

(b) Signature and seal. --

(1) A bond shall be signed manually or in facsimile by the chief executive of the political subdivision.

(2) An officer's signature or facsimile signature on a bond remains valid even if the officer leaves office before the bond is delivered.

(3) The seal of the political subdivision shall be affixed to the bond and attested by the clerk or other similar administrative officer of the political subdivision.

(c) Maturity. --

(1) A bond shall mature not later than 40 years after the date of issue.

(2) Bonds may be issued as serial bonds or term bonds with provisions for a mandatory sinking fund or other

21

annual principal redemption beginning not later than 3 years after the date of issue.

(d) Manner of sale. --

(1) A bond shall be sold in the manner, at public or private (negotiated) sale, and on the terms at, above, or below par, as the political subdivision considers best.

(2) A bond is not subject to Article 31, §§ 9, 10, and 11 of the Code.

HISTORY: 2009, ch. 743.

22

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*** Annotations through March 7, 2013 ***

ARTICLE 24. POLITICAL SUBDIVISIONS -- MISCELLANEOUS PROVISIONS
TITLE 9. REVENUE AND TAXES.
SUBTITLE 15. CLEAN ENERGY LOAN PROGRAMS.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 24, § 9-1506 (2012)

§ 9-1506. Tax exemption

(a) State and local. -- A bond, the transfer of a bond, the interest payable on a bond, the income derived from a bond, and the profit realized on sale or exchange of a bond are exempt from State and local taxes.

(b) Federal tax status. -- A political subdivision may issue bonds under this subtitle without regard to their federal tax status.

HISTORY: 2009, ch. 743.

23

7 of 7 DOCUMENTS

Annotated Code of Maryland

*** Current through all Chapters Effective January 1, 2013, of the 2012 General Assembly Regular Session, First Special Session, and Second Special Session. ***
*** Annotations through March 7, 2013 ***

ARTICLE 24. POLITICAL SUBDIVISIONS -- MISCELLANEOUS PROVISIONS
TITLE 9. REVENUE AND TAXES.
SUBTITLE 15. CLEAN ENERGY LOAN PROGRAMS.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 24, § 9-1507 (2012)

§ 9-1507. Findings of political subdivision conclusive

For purposes of an action involving the validity or enforceability of a bond or security for a bond, a finding by a political subdivision is conclusive as to:

(1) The public purpose of an action taken under this subtitle; and

(2) Any other matter relating to the issuance of a bond.

HISTORY: 2009, ch. 743.

NOTES: EDITOR'S NOTE. --See note to § 9-1501 of this article.

Policy Brief

Property Assessed Clean Energy (PACE) Financing:

Update on Commercial Programs

RENEWABLE FUNDING

CLINTON FOUNDATION

CLINTON CLIMATE INITIATIVE

BERKELEY LAB

Lawrence Berkeley National Laboratory

March 23, 2011

25

Executive Summary

Since 2008, 24 states and the District of Columbia have authorized Property Assessed Clean Energy (PACE) under state law, and state and local governments initially allocated over $150 million in federal grant funds to help launch programs.[1] However, actions taken by the Federal Housing Finance Agency (FHFA), the Office of the Comptroller of the Currency (OCC) and other financial regulators in mid-2010 froze most residential PACE programs. Commercial PACE programs were not directly affected by these actions and are moving forward in a number of cities around the country.[2]

This policy brief provides an overview of all currently operating commercial PACE programs, including project data, the various financing mechanisms that are being piloted, and common challenges across programs. The policy brief also includes a summary of programs in the mid- to late developmental stage.

Key findings:

- 71 projects have been approved and financed in the four active commercial PACE programs, representing about $9.7 million in energy efficiency and renewable energy project investments (see Table ES-1).

Table ES-1. Summary of Approved PACE Commercial Projects

Approved Projects	Total Approved Funding	Average Project Size	Range of Project Sizes
71	$9.69M	$138K	$2K -$2.3M

- In all active and planned programs, the existing mortgage holder must provide written consent or formal acknowledgement for the property to participate in the program. Mortgage lenders from local, regional and national banks have provided their approval for these projects.

- While all existing programs are utilizing government capital or credit to provide financing for PACE projects, the programs scheduled to launch in 2011 will rely primarily on private capital complemented by federal grant money for credit enhancement purposes.

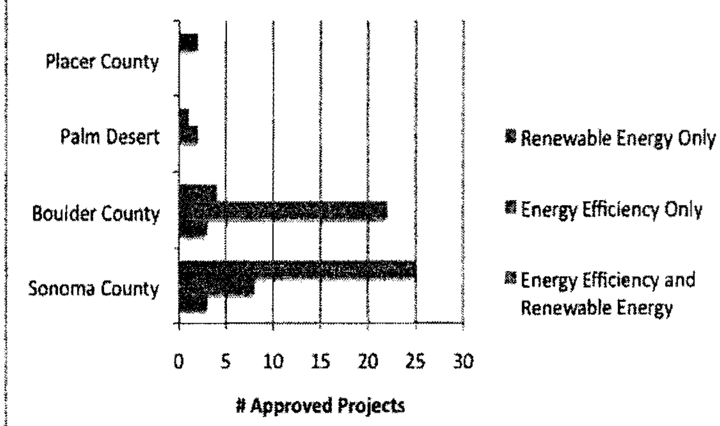
[1] These PACE programs were included in the initial plans and budgets filed by state energy offices and local governments under the State Energy Program (SEP) and Energy Efficiency Community Block Grant (EECBG) programs to utilize American Recovery and Reinvestment Act funds; most PACE program funds have since been redirected to other initiatives.

[2] Some regulatory risks remain for commercial PACE. For more information on regulatory action on residential and commercial PACE, please visit Lawrence Berkeley National Lab's "PACE Status Update": http://eetd.lbl.gov/ea/ems/reports/ee-policybrief081110.pdf

90

- The improvements financed have varied by program (see Fig. ES-1). For example, the majority of financings approved by Sonoma County (CA) will or have funded solar PV projects, while Boulder County's projects are predominately energy efficiency. This may be due to climate, local incentive structures, or other factors.

Fig. ES-1. Number of Approved Projects by Program & Type



- New commercial PACE programs are launching around the country and more significant project volumes are expected by the end of 2011 (see Table ES-2). An overview of the programs that have recently launched or are planning to launch in 2011 appears below.

Table ES-2. Commercial PACE Programs	
Operational Programs	4
Programs in Design	9
Preliminary Planning	4
Total	**17**

27

Commercial PACE Financing

Property Assessed Clean Energy (PACE) is an innovative municipal finance mechanism that allows property owners to finance energy efficiency and renewable energy projects – such as HVAC system upgrades, cool roofs, and solar photovoltaic systems – as a property tax assessment. The debt is typically secured by a senior lien on the property, which helps programs attract private capital at competitive rates and terms.[3]

Historically, much of the attention on PACE focused on its applicability to residential properties. In the wake of the actions of the FHFA, OCC and other financial regulators in the summer of 2010, more attention has shifted to the commercial building market.

This report provides an overview of all currently operating commercial PACE programs and a summary of programs currently in development.

An overview of commercial PACE, including financial structures, regulatory issues, American Recovery and Reinvestment Act (ARRA) compliance, and accounting, is provided in Appendix A.

PACE Programs

There are currently four commercial PACE programs in operation and nine in design, many of which are expected to launch in 2011.[4] To date, active programs have approved $9.69 million of financing for 71 projects (see Table 1).

Table 1. Summary of Approved Commercial PACE Projects

Approved Projects	Total Approved Funding	Average Project Size	Range of Project Sizes
71	$9.69M	$138K	$2K - $2.3M

Operational Programs

The four operational PACE programs vary significantly in design, funding source, and size. These differences reflect the resources available to the government sponsors, the building stock, and the incorporation of best practices over time. All of the operational programs are supported by public funds (e.g., for credit enhancement purposes or direct investment) and the rates and terms offered by these programs do not necessarily reflect market rates for private capital. Program data through January 2011 is summarized in Table 2.

[3] For more information regarding PACE please see "How to Guide on PACE Financing" (Fuller, Kunkel, Kammen 2009): http://rael.berkeley.edu/financing/resources

[4] In addition to those in formal planning stages, Cleveland, Ohio, Cutler Bay, Florida, New Orleans, Louisiana, and Sacramento, California have begun preliminary planning to launch PACE commercial programs.

28

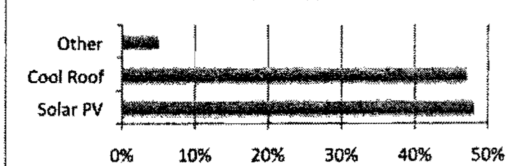
Table 2. Commercial PACE Programs in Operation Have Financed 71 Projects						
Program	Approved Projects	Total Approved Funding	Average Project Size	Interest Rate	Term (in years)	Source of Funding
Sonoma County, CA	37	$7.27M	$196K	7%	Up to 20	County Treasury
Boulder County, CO	29	$1.52M	$51K	1.04% or 2.29%[5]	5 or 10	Moral Obligation Bond Issuance w/ QECB
Placer County, CA	2	$319K	$160K	7.25%	Up to 20	County Treasury
Palm Desert, CA	3	$575K	$192K	7%	Up to 20	City Backed Funds

Sonoma County Energy Independence Program (SCEIP): Launched in spring 2009, SCEIP is open to both residential and commercial customers (see Table 3). The County is able to offer on-demand financing to property owners since the program is funded out of the County Treasury. The County is exploring the use of a takeout strategy so that it can replenish the funds it has already extended.

Table 3. Sonoma County Program Statistics	
Range of Project Size	Min $9.6K; Max $2.3M
Project Mix	25 Renewable Energy Only 7 Energy Efficiency Only 3 Energy Efficiency & Renewable Energy 1 Energy Efficiency & Water 1 Unspecified
Finance Structure	Warehoused
Source of Funds	County Treasury Funds
Lender Consent and/or Acknowledgment Required	Yes
Acceleration	No

While the program provides financing for a wide variety of renewable energy, energy efficiency and water efficiency projects, 95% of funds for commercial building projects have gone to fund solar PV (48%) and cool roofs (47%) (see Figure 1). The 25 solar PV projects will total over half a megawatt and range in size from under 10kW to over 100kW. Six of the projects include cool roofs ranging in cost from $7,000-$2.3 million. The remaining commercial building projects are solar

Fig. 1. Sonoma County Percent of Funds by Project Type



[5] Interest rates are 1.04% or 2.29% for projects with a five-year or ten-year term, respectively. In addition to the interest rate, capital expenses equal to 8.09% (five-year term) and 4.27% (ten-year term) of the project cost are added to the financed amount to cover administrative and other expenses incurred by the County over the lives of the assessments.

29

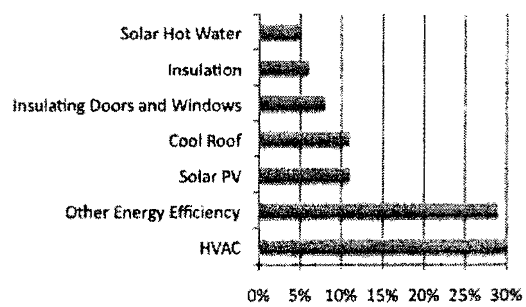
thermal (2%), HVAC (1%), and other energy and water efficiency measures such as lighting, windows, and insulation.

Boulder County ClimateSmart Loan Program: Boulder, CO pioneered the pooled bond method and has successfully completed two residential and one commercial bond issuances (see Table 4).[6] These bonds are backed by a moral obligation from the County. This moral obligation has enabled the County to issue debt at attractive rates and to pass on these low interest rates to participants. Boulder further reduced the interest rate for the commercial program by using a portion of its Qualified Energy Conservation Bond (QECB) allocation.[7]

Table 4. Boulder County Program Statistics	
Range of Actual Project Size	Min \$2K; Max \$200K
Project Mix	4 Renewable Energy Only 22 Energy Efficiency Only 3 Energy Efficiency and Renewable Energy
Finance Structure	Pooled Bond
Source of Funds	Public Issuance of Qualified Energy Conservation Bonds with a Moral Obligation
Lender Consent and/or Acknowledgment Required	Yes
Lender Consenting	7 National Bank 5 Regional Bank 5 Community Bank 3 Other Lending Institution 8 Properties have no mortgage 1 Unspecified
Average Ratio of Financed Amount to Actual Property Value	4.42%
Acceleration	Yes
Building Type	9 Office 6 Multi-family 5 Food Service 2 Small Manufacturing 2 Retail 5 Other

Boulder collected data on the value of participating properties, allowing program administrators to track the lien-to-value ratio (LTV) of the assessments. 90% of the assessments have a LTV that is less than 1:10. Only one project has an LTV significantly greater than the 1:10 threshold and this property does not have a mortgage. This data suggests that the 1:10 LTV requirement may be sufficient to maintain demand for PACE financing, however Boulder County property values are high and the financing amounts are low relative to other programs.

Fig. 2. Boulder County Percent of Funds by Project Type



Boulder's PACE program has financed a wide range of building types and measures (see Figure 2). The diversity of building types in the pool suggests that PACE financing may have wide applicability despite split incentive challenges in multi-family and other leased buildings. The majority of measures were energy efficiency improvements. By cost, 30% of financing went to HVAC units, 11% to solar PV, 11% to cool

[6] For more information on the pooled bond PACE model, see Appendix A.
[7] For more information on QECBs, see Appendix A.

30

roofs, 8% to insulating doors and windows, 6% to insulation, 5% to solar hot water and the remaining 29% to other efficiency measures such as lighting, retro-commissioning, and energy management systems.

Palm Desert Energy Independence Program: Palm Desert, CA launched the first PACE program in 2008 and officially reopened its application process in August of 2010 after a short suspension to review FHFA guidance. The hot climate makes solar, HVAC, and other efficiency measures especially cost effective for many building owners. The program has primarily funded renewable energy and energy efficiency improvements to residential buildings but it is also open to commercial properties and has funded two HVAC replacements and one solar PV system in that market (Table 5).

Table 5. Palm Desert Program Statistics	
Range of Project Size	Min $23K; Max $522K
Project Mix	1 Renewable Energy Only 2 Energy Efficiency Only
Finance Structure	Warehoused
Source of Funds	Municipal Funds and Redevelopment Agency Bonds
Lender Consent and/or Acknowledgment Required	Only for projects over $30K
Acceleration	No
Building Type	2 Retail 1 Office

mPOWER Placer County: Placer County, CA began to focus on providing PACE financing to commercial building owners in 2010. The program provides funding for both energy efficiency and renewable energy improvements. Both lender acknowledgment and a 1:10 lien-to-value ratio are required to participate in the program.

Table 6. Placer County Program Statistics	
Range of Project Size	Min $121K; Max $199K
Project Mix	2 Renewable Energy Only
Finance Structure	Warehoused
Source of Funds	County Treasury Investment
Lender Consent and/or Acknowledgment Required	Yes
Acceleration	No
Building Type	1 Plant Nursery 1 Motel

Two commercial projects have been funded and the county is processing twelve other applications (Table 6). Many of these applicants are manufacturing facilities. About two thirds of the proposed projects are solar PV and the remaining third are energy efficiency projects. The program covers two climate zones and operates in collaboration with two municipal utilities and one investor owned utility.

Currently, $33 million is committed for financing through the County Treasury with an additional $22 million available. At a future date, the county plans to sell the PACE bonds purchased and held in the County Treasury to replenish program funds for ongoing financing.

Programs In Development

The majority of PACE programs in development were specifically designed to serve commercial markets, rather than being adapted from existing residential programs. These programs will generally use private capital to fund improvements but most will still rely upon credit enhancements like debt service reserves to attract private capital and to lower rates for potential participants.

31

City of Ann Arbor, MI: Michigan recently passed PACE enabling legislation that would allow its municipalities to launch commercial PACE programs. The City of Ann Arbor is planning to launch a PACE commercial pilot later this year and may allocate a portion of its ARRA funds to capitalize a debt service reserve fund.

California PACE Program: The California PACE Program is a privately-funded, state-wide program. The program is administered through the Pacific Housing Finance Agency (PHFA), a CA State Joint Powers Authority (JPA). Any city or county in the State of California can join the program, which will use its existing bonding authority (currently $95 million and up to $2 billion) to raise capital for projects that have been aggregated across multiple jurisdictions and meet certain eligibility requirements (e.g., lien holder consent obtained). Using this aggregation approach, the program aims to secure greater access to capital and lower transaction costs for local PACE programs and the projects that they fund. As of March 2011, eight cities have obtained the necessary approvals to join the program including Tulare, Fresno, Palm Springs, Farmerville, Woodlake, Adelanto, Exeter and Calipatria. The California PACE Program has received over $4 million in funding applications and expects to aggregate energy retrofit applications already received for an initial bond offering in second quarter 2011.

City of Los Angeles, CA: The Community Redevelopment Agency of the City of Los Angeles (CRA/LA) is currently developing the Energy Upgrade Los Angeles Commercial Building Performance Initiative to catalyze holistic energy and water performance upgrades in Los Angeles' existing non-residential commercial buildings. The primary goal of the program is to enable PACE financing of single building projects under the "owner-arranged" model,[8] in which owners negotiate and obtain financing directly from capital providers. The program will also accommodate alternative approaches to financing projects in the event that the building owner is unable to secure mortgage holder consent to a PACE assessment. The Initiative will use ARRA monies to fund no-cost energy audits for property owners and to provide appropriate levels of credit enhancement for the program's initial projects. Program launch is slated for the second quarter of 2011.

Northeast Ohio: The Northeast Ohio Advanced Energy District (AED) is Ohio's first energy special improvement district (SID), a not-for-profit entity, incorporated in December 2010 by the City of Cleveland and 14 inner ring suburban municipalities of the First Suburbs Development Council. The Economic Development Directors of each municipality serve on the AED Board and two staff are currently working on program design with an expected program launch date of Summer 2011. The AED enables commercial and industrial property owners in the 15 AED member communities to install and finance energy related projects, including solar electric, solar thermal, wind, geothermal, biomass and energy efficiency related technologies.

City and County of San Francisco, CA: The City and County of San Francisco is using ARRA funds to develop a commercial PACE pilot program as part of their GreenFinanceSF program. San Francisco intends to use the "owner-arranged" model, at least initially. The portfolio of projects will be supported by an ARRA-funded debt service reserve.

Santa Fe County, NM: The County of Santa Fe created its PACE district in October 2009 and is designing a commercial PACE pilot program. Due to the nature of New Mexico's PACE

[8] For more information on the owner-arranged PACE model, see Appendix A.

32

enabling legislation, the program will restrict financing to renewable energy measures. The program will likely use the pooled bond approach and plans to attract private capital by using ARRA funds to capitalize a debt service reserve.

Washington, D.C.: The Washington, D.C. Mayor's Office of Planning and Economic Development is finalizing a contract with its PACE program administration partner. The contract should be in place soon with program launch slated for mid-2011. Commercial and multifamily properties will be eligible to participate, making PACE financing available to approximately 75% of the buildings in Washington, D.C. The District plans to use revenue bonds to fund a pilot of $25-$30 million of energy improvements—it has $250 million of total bonding authority. Fourteen major property owners own the majority of buildings in downtown D.C., and the program plans to do aggressive outreach to these owners in order to promote energy improvements on a diverse portfolio of buildings.

Western Riverside Council of Governments (California): The Western Riverside Council of Governments (WRCOG), which consists of 17 cities, the County of Riverside and two water districts, is developing an energy efficiency and water conservation program that would allow commercial property owners to implement energy and water efficiency improvements using PACE assessments. The program will utilize specific credit underwriting guidelines including minimum property LTV and project debt service coverage ratios in determining loan eligibility. The program is expected to fund projects through the sale of bonds by WRCOG. WRCOG is simultaneously developing a separate program to fund large solar projects in commercial buildings. Initially, up to $25 million will be made available for financing projects. The program plans to begin accepting solar project applications in May or June of 2011.

Melbourne, Australia: The City of Melbourne launched the 1200 Buildings Program in March 2010 with the aim of catalyzing the retrofit of at least 1,200 predominantly non-residential buildings in the municipality. The program is the first of its kind in Australia. The ultimate goal of the program is to save five gigalitres of potable water and reduce energy use in these buildings by 38%, mitigating 383 kilotons of greenhouse gas emissions. The program identified a lack of commercial funding as one of the key barriers to implementing environmental upgrades to existing buildings. The City of Melbourne aims to overcome this barrier by partnering with Australian financial institutions and entering into voluntary arrangements with property owners for the purpose of securing project financing. The financed amount for each project is declared against the property as an Environmental Upgrade Charge (EUC) and the City of Melbourne levies this charge annually. The 1200 Buildings Program is managed through a strategic partnership between the City of Melbourne and the Sustainable Melbourne Fund (SMF).

33

Conclusion

Preliminary data from the four operational programs indicates that PACE financing has the potential to serve a variety of building types and is suitable for financing a range of energy efficiency and renewable energy improvements. This data also suggests that underwriting criteria like lender consent/acknowledgement and maximum lien-to-value (LTV) ratios may be sufficient to responsibly deliver PACE financing to commercial building owners. Participating property owners have had success in obtaining consent/acknowledgement from mortgage holders including local, regional, and national lenders and approved financings have largely met a 1:10 LTV ratio.

This data is encouraging, but cannot be widely extrapolated since many of the programs launching in 2011 will utilize different financing structures, credit enhancements, and will serve substantively different markets. Both Los Angeles and San Francisco will pilot the owner-arranged financing model and will serve major urban markets. New programs will also test the ability of PACE to attract capital without the use of municipal funds or governmental backing.

34

About the Authors of this Policy Brief

Renewable Funding: Renewable Funding specializes in design, administration, technology, and financing solutions for clean energy retrofit programs. Since 2008, the firm has worked with over 200 communities to structure residential and commercial financing programs.

Renewable Funding is internationally regarded as an innovator in the clean energy financial marketplace. The firm has pioneered property assessed clean energy (PACE) models for residential and commercial properties, including leading the launch of the seminal BerkeleyFIRST program. The firm also works, in close partnership with leading financial institutions, to develop a secondary market for clean energy products. For more information, visit: www.renewfund.com

Clinton Climate Initiative: The William J. Clinton Foundation launched the Clinton Climate Initiative (CCI) in 2006 to create and advance solutions to the core issues driving climate change. Working with governments and businesses around the world to tailor local solutions that are economically and environmentally sustainable, CCI focuses on three strategic program areas: reducing emissions in cities, catalyzing the large-scale supply of clean energy, and working to measure and value the carbon absorbed by forests. In each of these programs, CCI uses a holistic approach to address the major sources of greenhouse gas emissions and the people, policies, and practices that impact them. CCI is the delivery partner of the C40, an association of large cities around the world that have pledged to accelerate their efforts to reduce greenhouse gas emissions. CCI has extended the benefits of its cities programs to a number of additional public and private sector partners. CCI cities programs include energy efficiency building retrofits, outdoor lighting, waste management, low carbon transportation, urban developments and $CO2$ measurement and reporting. CCI is a non-profit organization that operates from an independent and unbiased perspective and has no financial interest in any project that might be developed as a result of its involvement. Its work is funded through charitable donations from individuals and private foundations. For more information, visit: http://www.clintonfoundation.org/cci

Lawrence Berkeley National Lab: Within the Electricity Market and Policy area, Lawrence Berkeley National Lab (LBNL) analyzes public interest policy issues and conducts research projects on key electricity market issues, including electric power system reliability, energy efficiency, demand response, renewable energy, distributed energy resources, and energy sector modeling. For more information, visit: http://eetd.lbl.gov/EA/EMP/emp.html

35

Appendix A – Overview of Commercial PACE

Property Assessed Clean Energy (PACE) financing programs allow state and local governments, where permitted by state law, to extend the use of land-secured financing districts to fund energy efficiency and renewable energy improvements on private property. PACE programs attach the obligation to repay the cost of improvements to the property, not to the individual borrower.

There are two major characteristics that make PACE unique in contrast to the traditional use of land-secured financing districts. First, property owner participation is 100% voluntary—only those property owners that choose to participate in the PACE program, or purchase a participating property, pay the costs of the additional assessment. Second, PACE financing can only be used to pay for prequalified energy efficiency and renewable energy improvements on participating properties.

Commercial PACE Finance Structures[9]

Three main financing structures have evolved to support commercial PACE programs:

1. **Warehoused**: The municipality uses a large line of credit (in the millions of dollars), or other credit facility, to fund qualified projects on an as-needed basis. When sufficient project volume is reached, the portfolio can be sold through a municipal revenue bond issuance or other capital markets transaction. The proceeds of the sale replenish the line of credit and facilitate a new funding cycle. As an alternative to private capital, local or state governments can choose to fund projects from their general funds and/or investment portfolios.

2. **Pooled Bond**: Property owner applications for PACE financing are approved during an aggregation period. When a sufficient pool of approved applications has been assembled, the local government sells a bond to fund all of the projects and permits property owners to proceed with their energy upgrades.

3. **Owner Arranged:** Property owners have the flexibility to independently secure financing for a defined project with a lender of their choice. Financing terms are negotiated independent of the municipality or state, and are predicated on 1) the senior lien that the PACE mechanism affords and 2) the underlying credit of the owner/building. This model is designed to avoid the timing delays associated with the pooled bond approach (i.e., waiting to aggregate projects and waiting to issue a bond in the market). This approach may be better suited for larger projects (e.g. greater than $500K) and/or buildings with better credit.

Background on Federal Regulatory Issues

Most regulatory activity has focused on residential PACE programs as opposed to commercial PACE programs.

[9] More information on the three financing methods is available in the Department of Energy's "Clean Energy Finance Guide for Residential and Commercial Building Improvements": http://www1.eere.energy.gov/wip/solutioncenter/pdfs/revFinal_V3Ch13CommercialPACEDec9.pdf

36

The Federal Housing Finance Agency (FHFA) issued a statement on July 6, 2010, that PACE programs with senior lien position[10] "present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac, and the Federal Home Loan Banks." In particular, PACE liens were deemed to "run contrary to the Fannie Mae-Freddie Mac Uniform Security Instrument...." —i.e., the standard mortgage contract. This position has halted most residential PACE programs in the U.S.

The FHFA letter was specific to home mortgage lending. The Office of the Comptroller of the Currency (OCC), which regulates national banks, also issued PACE guidance in July 2010. This statement raised additional concerns by specifically mentioning commercial properties in its statement that "safety and soundness concerns" exist. However, the OCC did not indicate whether commercial PACE programs could go forward. A detailed discussion of this issue is included in a recent report by Lawrence Berkeley National Laboratory[11]. Efforts are underway to obtain further clarification from the OCC.

Generally speaking, commercial PACE programs with lender and owner consent and/or acknowledgement provisions—both the existing lender and property owner must give their written consent and/or acknowledgement for the PACE financing—provide robust lending safeguards. PACE programs may also institute more explicit credit underwriting requirements - such as maximum building loan-to-value ratio and maximum lien-to-value ratio - in an effort to protect existing lien holders and property owners from unnecessary debt-related risks.

ARRA Uses and Requirements

Many commercial PACE programs are using American Recovery and Reinvestment Act (ARRA) or other public funds to provide enhanced services and/or credit enhancement. The funds can provide a valuable tool to reduce program and financing costs, but ARRA funds come with significant reporting and other obligations.

There are several program design options that can use ARRA or other funds to reduce the interest rate of PACE financing by reducing risk to capital providers. The most common options are described below.

- **Debt Service Reserve Fund:** A debt service reserve fund (DSRF) equivalent to 5%-10% (or more) of the issuance is commonly created to cover bond debt service (i.e., payments made to bond investors) in the event of late payments or defaults by property owners.

- **Subordinate Capital**: A common capital markets credit enhancement structure is a "senior-subordinate" structure. In such an approach, the ARRA or other public funds would be combined with private capital and provided for project financing rather than held in reserve. In the event of a default, the losses are first borne by the publicly-funded, subordinate piece of the investment. The private investor's senior interest remains protected until losses exceed the amount of subordinate capital in the financing.

[10] *Senior lien position* refers to a debt having priority over all other debt on a property in the case of foreclosure (i.e., it gets paid off first before other outstanding debt, including mortgages). Most PACE programs use a senior lien position for the PACE debt because the PACE assessments are part of the property taxes, and property taxes are already senior to other property debt. But there are some PACE programs that use a *subordinate* or *junior* position instead, which means the mortgage has priority over the PACE debt.

[11] http://eetd.lbl.gov/ea/ems/reports/ee-policybrief081110.pdf

37

- **Qualified Energy Conservation Bonds (QECBs)**[12]: State or local governments that have access to allocations of QECBs can use them to fund PACE programs at below market rates. QECBs are a type of qualified tax credit bond that can be used to fund energy saving projects in public and private buildings (subject to limitation). Tax credit bonds allow municipalities to borrow at lower effective interest rates because the federal government subsidizes their interest payments to investors through the use of a tax credit or cash-in-lieu of credit.

- **Obligation of Government Credit**: While not a use for ARRA funds, it is important to note that local or state governments can fully or partially guarantee repayment by placing a general or moral obligation on PACE financings. Under a general obligation, local or state governments pledge their full faith and credit to the bonds—effectively guaranteeing that if tax receipts fall short, they will make up the difference. With a moral obligation, the governmental body pledges to back the bond, but makes no legal commitment to do so.

The use of federal ARRA funds to support PACE programs can trigger labor and environmental laws.

- **Davis-Bacon and Prevailing Wage**: Many federally supported programs must comply with the Davis-Bacon Act, which requires the payment of a prevailing wage to contractors utilizing the program. The U.S. Department of Energy has stated that loan loss reserves do not automatically trigger Davis-Bacon as federal funds do not flow to contractors.[13] However, commercial PACE programs that use ARRA funds to directly fund the installation of projects are subject to the requirements of the Davis-Bacon act and must pay prevailing wages.[14]

- **National Environmental Policy Act (NEPA)**: ARRA funds used for credit enhancement of a financing program—including a debt service reserve fund, interest rate buy-down, or third-party loan insurance—are subject to federal requirements including the National Environmental Protection Act (NEPA).[15]

Acceleration and Transferability

PACE assessments are generally treated as any other tax obligation and are often transferred to the new owner upon sale of the property. Consequently, only delinquent payments of the assessments are due if the property is foreclosed upon, instead of the entirety of the assessment. This is referred to as a "non-acceleration" of payments. [16]

[12] More information available on QECBs at http://www1.eere.energy.gov/wip/solutioncenter/financialproducts/QECB.html

[13] http://www1.eere.energy.gov/eere_faq/detail_search.aspx?IDQuestion=712&pid=10&spid=1

[14] http://www1.eere.energy.gov/wip/davis-bacon_act.html

[15] http://www1.eere.energy.gov/wip/nepa_guidance.html

[16] More information about the non-acceleration of PACE assessments can be found in the May 2010 LBL Policy Brief by Zimring and Fuller "Accelerating the Payment of PACE Assessments" http://eetd.lbl.gov/ea/ems/reports/ee-policybrief_050410.pdf

38

Pass Through

PACE assessments may be eligible for expense "pass-through" to tenants, depending on lease structure and local law. In the case of net lease agreements, the pass-through of assessments would allow owners and tenants to more equitably share in the costs and benefits (e.g. lower utility bills) of the energy project. However, no accounting firm has categorically determined the proper accounting treatment of PACE assessments, so owners must rely on their own accountants' interpretation.

39

GREATER
WASHINGTON
COMMERCIAL
ASSOCIATION
OF REALTORS®

June 25, 2013

Council President Nancy Navarro
100 Maryland Avenue
Rockville, MD 20850

RE: Bill 11-13, Commercial Property Assessed Clean Energy Program - Established

Position: Support

Council President Navarro and members of the County Council:

I am writing to you on behalf of the Greater Washington Commercial Association of REALTORS® (GWCAR), a 500-member regional trade association committed to supporting commercial real estate interests throughout the District of Columbia, Suburban Maryland and Northern Virginia. GWCAR would like to voice its strong **support for Bill 11-13**.

GWCAR strongly supports energy efficiency measures and we believe that the commercial real estate market has been and continues to demand that commercial properties move in that direction. As commercial real estate brokers we see energy efficiency, conservation and the environment as very important issues that are not only important to us as REALTORS®, but as citizens and neighbors. We have always expressed concern about mandatory requirements related to energy audits or other energy efficiency requirements but we are very happy to work with Councilmember Berliner and the entire county council on measures such as Bill 11-13. We believe that this helps to encourage the county to look at policies that provide more market-based solutions on a voluntary basis instead of mandates that are triggered by or hinder consumer decisions to buy or sell a commercial building.

Again, we would like to thank Councilmember Berliner specifically and the entire council for the vision in addressing this very important issue. GWCAR looks forward to continuing to work on this issue to find the best way to encourage all commercial sector properties to improve their energy efficiency. Thank you for your consideration of GWCAR's perspective and we look forward to attending the committee worksessions for further discussions.

Thank you,

Mark Sullivan
2013 GWCAR President

Bill 11-13 and PACE Options for Montgomery County

I. Background:

Property Assessed Clean Energy (PACE) allows a business or resident to finance a range of energy efficiency or renewable energy improvements and pay for the costs over time via an assessment on the County property tax bill.

PACE has been widely promoted as offering the following benefits depending on the program design:

- Enables financing availability and lower interest rates due to high security of repayment, and possibly access to lower cost municipal funds and/or subsidies.
- Extends financing over long periods of time, commensurate with the return on investment of a project.
- Passes remaining loan balance to subsequent property owners.

Another potential advantage of PACE is that is addresses the "split incentive" problem that exists in some commercial leases. The split incentive arises when a building owner pays for energy efficiency improvements, but it is the tenants that reap the benefits of those improvements through reduced energy costs. Under leases where property taxes and other assessments on the property tax bill are passed through to the tenants, the cost of improvements financed by a PACE assessment can be passed through to tenants as well.

Similar to other programs that provide financing or incentives for building energy performance improvements, PACE enables a range of job creation, economic development, building valuation, and environmental benefits.

Currently 28 states have passed enabling legislation allowing the creation of PACE and similar programs, and approximately 10 programs are operating or near release. Most of the programs focused on commercial properties, particularly those in communities with building stock similar to Montgomery County (e.g., DC, San Francisco, Los Angeles, Connecticut), are in their relative infancy with few financed projects.

Montgomery County passed legislation in 2006 creating the Home Energy Loan Program which would have offered PACE benefits to County homeowners. The program was indefinitely suspended due to directives by the Federal Housing Finance Agency (FHFA) to lenders regulated by the agency prohibiting mortgages for properties encumbered with PACE assessments. [1] Commercial properties are not subject to regulation by FHFA but may be subject to regulation by other government entities.

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[1] Note the FHFA restrictions would apply to condominiums, which may preclude offering PACE to this type of commercial/multi-family building. Rental communities are generally considered businesses.

II. Types of PACE Programs:

There are three primary types of PACE programs, classified by the source of capital. Each of these may have a number of subtypes or may blend components of different models into one program.

Private Financing and Owner Arranged Financing Models

Examples: San Francisco, Los Angeles/California First

These programs use private capital from a variety of lenders, subject to certain conditions. The County or municipality then services the loan by collecting debt through the property tax bill. A jurisdiction's program management processes are limited to co-marketing the program, collecting the loan and paying the debt holder, and monitoring the program. The sponsoring jurisdiction could select one financing partner, or allow property owners to partner with lenders of their choice. Under private financing and owner arranged models the pool of available funding and the terms of the financing are only limited by the tolerance of the capital partners. San Francisco is operating on this model and DC and Connecticut hope to transition in this direction. The County is currently precluded from collecting private capital via the property tax bill. Maryland Senate Bill SB1016 sought to remedy this but did pass in the 2013 session of the General Assembly. However, the bill passed by a unanimous vote in the State Senate and the Senate approved version is not opposed by the Maryland Bankers Association.

Quasi Government Facilitated Programs

Examples: Connecticut C-PACE, Florida Green Finance Authority

These programs utilize a quasi-government entity with the authority to issue bonds or engage private capital to provide financing to projects. Programs of this type typically use the quasi-government organization to market the program, arrange the projects, and facilitate financing via their balance sheet. The organization may also arrange projects via an Energy Services Company (ESCO). The jurisdiction's role is to collect the repayment via the property tax assessment, enforce defaults via tax sale, and perhaps co-market the program. Maryland currently has an organization in place, the Maryland Clean Energy Center (MCEC), with the existing authority to issue bonds and debt for energy efficiency and renewable energy projects throughout the state. MCEC currently is providing financing, via energy services agreements and tax-exempt bonds (though they can issue taxable bonds as well), to Coppin State University and has several similar projects underway via its Maryland Clean Energy Capital (MCAP) program.[2] It is possible, subject to discussions with the MCEC, that this program could be expanded into commercial taxable bonds if coupled with PACE if specific legal barriers can be overcome.

[2] http://www.mdcleanenergy.org/maryland-clean-energy-capital-financing-program-FAQs

Municipally Financed Programs

Examples: DC PACE (transitioning to Private Capital or Owner Arranged)

These programs derive funding from municipal bonds, revolving loan funds capitalized from a public benefit charge or energy tax, internal reserve and pension funds, or other appropriated funds. Most commercial programs have transitioned from or abandoned this model due to the large capital costs of most commercial projects, which could be millions of dollars each. In addition, these programs hope to use government funding as a conduit that would be replenished when projects were fully securitized and sold into the capital market, such as Washington D.C. Ultimately, however this would entail the County repaying private debt via the property tax bill, which we are precluded from doing.

III. Best Practices/Common Themes

While program designs and capital sources vary, several key themes have emerged as good policies or best practices to create successful programs, build capital market interest in purchasing securities based on PACE assessments, and enhance the overall market for PACE assessments.

- Lender Consent – Requires lender(s) with liens on a financed property to consent to a PACE assessment before one can be levied on a property. A slow process, but essential to ensuring that PACE assessments do not affect existing project financing. Commercial lenders are generally familiar with multiple sources of financing being used for projects. (This requirement is included in Bill 11-13)
- Enable Owner Arranged Financing – Commercial properties often have existing lenders that will need to be involved providing in consent, and may want to be part of the financing process (e.g., first right of refusal). Allowing owners to arrange their own financing provides the opportunity to leverage a variety of capital sources. As noted previously, state law currently prohibits the use of the tax bill to collect private debt. In addition, this approach would likely result in different interest rates for different projects; Finance should assess whether this would be an issue during the debt collection process if the tax bill prohibition is lifted.
- Energy Cost Savings Equal Financing and Project Costs – In principle, the energy savings from a PACE-financed project over the finance term should exceed the financing and project costs. This ensures that PACE provides an overall positive societal benefit, puts lenders at ease, and minimizes the chance that a PACE assessment interferes with future property transactions.[3]
- Provide Adequate Administrative Resources – Resources for rapid administration, approval, coaching, and project review are essential to ensuring a steady flow of viable projects.
- Conduct Energy Measurement and Verification (EM&V) – EM&V monitors a projects performance over an extended period of time (the standard for guaranteed savings projects is the life of the equipment) to ensure the anticipated savings. Over time, strong EM&V helps convince lenders to offer consent and owners to engage in projects. Finally, on a national scale,

[3] Water savings are also often included in PACE. Other valuations of property may be included, but need to be viewed with caution due to variances in the property appraisal process.

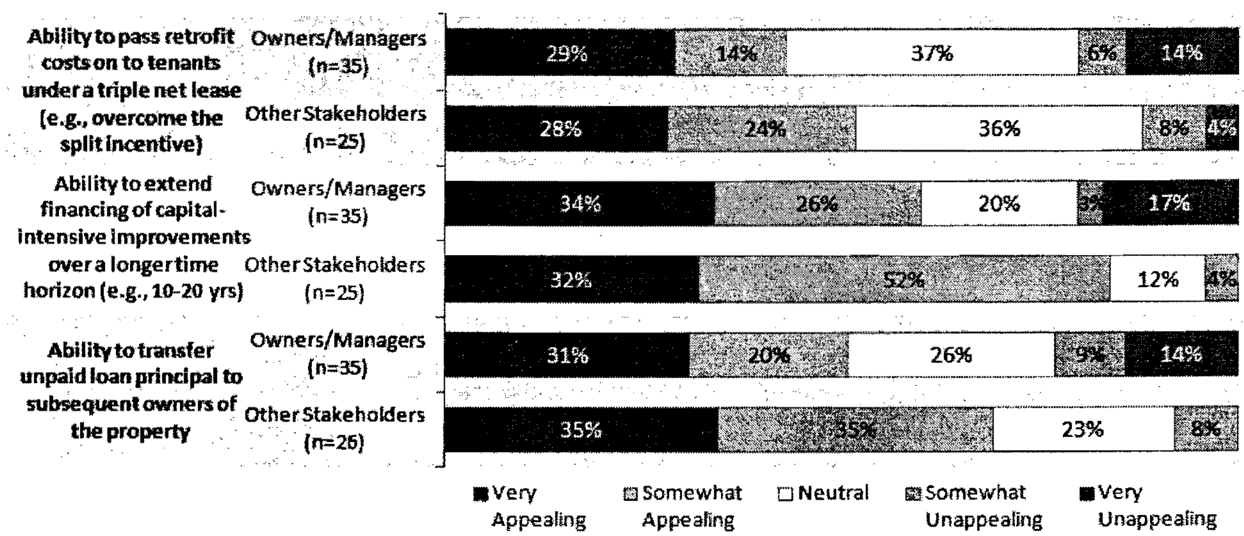
projects with a proven return on investment will be easier to package into specialized PACE securities. Most programs conduct some form of EM&V at substantial cost.

- Couple PACE with Utility Incentives – Utility incentives are essential to reducing the initial financed amount which assists with matching cost savings with project costs. Maryland has extensive energy savings incentives that could bolster the business case for PACE.

IV. Interest in Commercial PACE - Local and National

Data collected by organizations such as PACENow and local data collected via the Montgomery County Commercial and Multi-Family Building Study indicate a strong general interest in PACE as a financing tool to address large, costly retrofits that take a long time for savings to offset project costs. For Montgomery County, approximately 60% of surveyed building owners and operators indicated an interest in participating in PACE. Specific responses to common PACE benefits are outlined in figure 1. [4]

Figure 1. PACE Benefits



Despite interest, many existing programs have not shown rapid results or suffer from a lack of viable projects due to the following issues:

- Interest in PACE is often high at initiation, but declines depending on the appropriateness of the project, ability of applicant to meet underwriting criteria, and final terms of the agreement.
- The pipeline for identifying, designing, and financing projects is long, often a multi-year process.
- Interest rates for PACE, while generally low compared to "unsecured" commercial financing that is not tied to the property, is not necessarily cheap.
- Lenders have limited motivation to consent and those that do are often slow to do so.

[4] http://www6.montgomerycountymd.gov/content/dep/downloads/Energy/FINALCommercialandMulti-FamilyStudy.pdf

Based on information from other jurisdictions with active PACE programs, a limited number of projects have been financed to date:

Program	Projects Interested	Projects Financed
DC	12 large, 20 small	One 140 unit residential property valued at $340,000 underwritten and project underway.
San Francisco	Up to $7 million in projects.	One $1.4 million project.
Connecticut	120 projects, staff estimate 70% convertible to projects	One complete, two near final. Collectively $3.5 million.
Florida	Unknown	0
Sonoma	Unknown	58, but most smaller projects

V. Fiscal Impacts and Costs:

Programs vary in fiscal impacts and costs extensively based on size, design, capital source and other factors. Costs can generally be categorized as follows:

Capital – Fiscal impacts vary depending on the type of program adopted, the cost of capital, and the amount of capital needed.

- Owner arranged programs or programs that use private capital are essentially unrestricted as the funds are a pass through to the government and not obligations on the jurisdiction's books. The capital pool is only limited by the willingness of lenders to provide funding.
- Quasi-government run programs are limited by the amount of capital that the organization is authorized to raise in bonds or through agreements with private lenders.
- Government revolving loans or conduit bonds, may be limited in the amount of exposure the government has backing the bond. However, to be sustainable given the scale of commercial projects, all programs using this approach hope to ultimately package the bonds for sale to capital markets to replenish loan funds available.

Program	Type of Fund	Initial Funding
DC	Conduit Bond	$250 million
San Francisco	Private Capital/Owner Arranged	Unlimited, but short term limits due to credit enhancements
Connecticut	Public Benefit Funds/Owner Arranged Financing	$20 million
Florida	Private Funds	$500 million
Sonoma	Treasury/Private Funds	Over $67 million

Credit Enhancements and Subsidies – Most programs employ some form of credit enhancement to either ensure timely payment to lenders or offset losses. Under PACE, the most significant credit enhancement is a primary position on a loan; however additional enhancements and subsidies may be necessary to make loans palatable to customers (building owners) and sources of capital. Credit enhancements include:

- Loan Loss Reserve Funds – Funds to cover payments to lenders until missed payments can be recovered during tax sale. To minimize drain a jurisdiction must be willing to send a property to tax sale promptly, with no exceptions. Lost reserve funds are always recovered after a tax sale if the PACE loan is primary.
- Monthly/Quarterly Payments – County taxes are only paid annually or twice a year. Liquid funds may be needed to ensure timely payment of capital. Funds are recovered ultimately via payments.
- Interest Rate Buy Downs – Funds used to pre-pay or buy-down interest to reduce the rate realized by projects. Funds are not recoverable and must be funded annually.

Program	Interest Rate (Range)	Credit Enhancements
DC	6 to 7%	None
San Francisco	6 to 7%	Loan Loss Reserve Fund
Connecticut	4 to 6%	Low Cost Capital Pool from Public Benefit Funds ($20 million). Considering credit enhancements.
Florida	6 to 7%	None
Sonoma Energy Independence Program	7%	None

Start-up Costs – Most programs incur some form of start-up costs to set-up the program, prepare materials, develop underwriting standards, develop web infrastructure and manage the workflow of applications. Conceivably these costs could be recovered through fees added to future loans, if the program is successful. However, to avoid burdening loans which already may have higher than preferred capital costs, most programs have chosen to use federal grant funds , public benefit funds, or local funds to offset these costs upfront. Dedicated staff or specialized consultants are generally needed to guide program set-up from the beginning.

Program	Implementation Funds	Ongoing FTEs/Consultants
DC	$800k	1+ consultants
San Francisco	$600k	2+ consultants
Connecticut	$1 million	2+ consultants (6 to 8 individuals and other specialized consultants as needed)
Florida	Unknown[5]	Volunteer commissioners
Sonoma	Unknown	2

Ongoing Administrative and Program Monitoring – Most programs assume that once a program reaches a certain scale, costs for administrative staff to process assessments, market the program, coordinate underwriting, etc. will be entirely funded by a small surcharge on each loan. Connecticut's budget for staff and consultants is $1 million annually. Additional funds may be needed depending on the degree of initial project review that is conducted to determine if energy costs savings can realistically match financing and capital costs. Monitoring of savings over time, which programs such as Connecticut perform, adds additional costs and specialized labor which may not be realistic to encompass in loan proceeds.

[5] Program development funds, operational funds and other needs are currently being paid for by a relationship with SAIC. After implementation, SAIC will recover initial investment and ongoing costs via a surcharge on the loans.