



Client Alert

August 9, 2010

Future Energy - PACE Legislation in Missouri

Property Assessed Clean Energy ("PACE") programs, which offer property owners access to low-cost long-term loans to help pay for the installation of energy efficiency upgrades, have become extremely popular across the country. PACE financing has been recognized throughout the nation as a potential breakthrough financing option that allows building owners to fund permanent energy efficiency and on-site renewable energy improvements through voluntary assessments paid with their property taxes.

Armstrong Teasdale's Future Energy Group is working closely with a number of constituents on the implementation of PACE programs. The Future Energy Group stands ready to provide advice and guidance to:

- **Counties and municipalities** who are interested implementing the PACE legislation, including counties and municipalities that may seek to aggregate projects
- **Energy contractors and renewable energy generators** interested in installing energy conservation, solar, wind, bio-fuel or other projects
- **Commercial and industrial real estate developers** who are developing or renovating "green" properties
- Companies interested in learning about **federal tax incentives** that may be available for energy projects
- **Underwriters** who will be partnering with municipalities in the issuance of PACE bonds.

Missouri came on board when Governor Jay Nixon signed the state's PACE law on July 12, 2010. Projects financed by PACE could include such diverse ventures as large solar power systems, utility lines, biomass facilities, installation of energy-efficient appliances, and weatherization of homes.

The PACE programs are so popular that the U.S. Department of Energy recently committed \$150 million in stimulus funds to help continue and expand PACE programs and give an economic boost to property owners that install energy systems. The PACE law enables local governments to finance energy efficiency and renewable energy projects through the issuance of bonds or by structuring other sources of capital. Municipalities are familiar with these types of financing in the form of neighborhood improvement districts. Armstrong Teasdale has worked extensively with municipal financing districts (also known as "special tax" or "special assessment" districts) since their inception.

Although the publicly created PACE fund advances the project costs, participating property owners (participation is voluntary) repay these amounts through a special property tax assessment, over a term of up to 20 years. The PACE financing structure combined with potential federal and state tax incentives and utility rebates can make renewable energy and energy efficiency improvements affordable and cost effective for homeowners and businesses. If the property is sold before the end of the repayment period, the new owner inherits both the remaining repayment obligation and the financed energy improvements. The reliable stream of assessment payments can support bond issuances, enabling projects that are larger than municipalities might otherwise be able to support.

PACE legislation has been adopted in 23 states and is currently being implemented.

The initial implementation of PACE has encountered some resistance from the Federal Housing Finance Agency ("FHFA"), which oversees the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"). The FHFA announced that the PACE programs are unacceptable for mortgage lenders in their current form. This announcement follows the issuance by Fannie Mae and Freddie Mac of guidance letters to mortgage lenders and servicers that reiterate each agency's prohibition against any loan (such as a PACE loan) that has a senior lien status to a mortgage.

While government authorities are deliberating best practices to assure that Fannie Mae and Freddie Mac are not adversely impacted by PACE funding, local governments are proceeding to implement commercial PACE programs to finance energy

efficiency and renewable energy improvements. Local governments finance the up-front costs of improvements to commercial properties, and property owners repay the costs as a line item on property tax bills. In these cases, the mortgage holder's consent is typically required before PACE funding can be implemented.

Although many municipalities are interested in providing funding for energy projects to residential homeowners, commercial projects may be the first beneficiaries of PACE funding. For example, PACE applications may be aggregated and a revenue bond issued to fund proposed commercial projects. For sufficiently large projects, a revenue bond is issued to fund an individual project.

**Questions about this client alert can be directed to your usual
Armstrong Teasdale contact attorney or any of the following attorneys:**

Cary Levitt / 314-621-5070
clevitt@armstrongteasdale.com

Roger Walker / 314-621-5070
rwalker@armstrongteasdale.com

Robert Klahr / 314-621-5070
rklahr@armstrongteasdale.com

Mark Boatman / 314-621-5070
mboatman@armstrongteasdale.com

Daniel Wofsey / 314-621-5070
dwofsey@armstrongteasdale.com

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