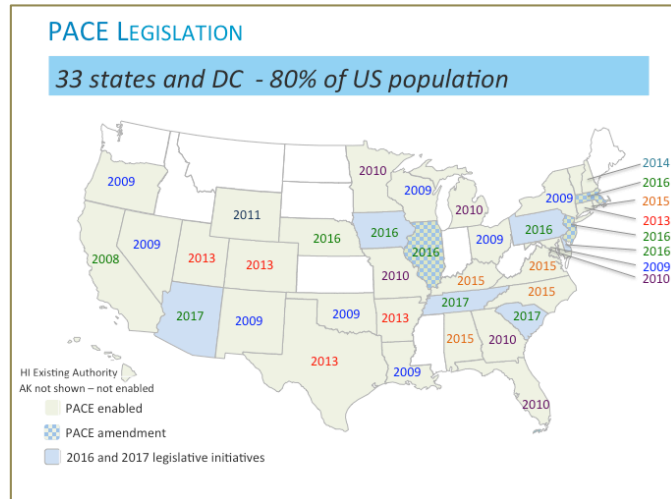




PACE Legislation

“PACE in More Places” starts with legislation. The good news is that today, legislative authorization for PACE is in place in 33 states and the District of Columbia. Roughly 80% of the U.S. population live in states where PACE financing is or could be available.

PACENation is increasingly called upon for advice and assistance with legislative efforts. Legislative initiatives that we are currently engaged with are shown in the blue shaded states on the accompanying map.



PACENation needs to work with organizational allies in any given state to lead a PACE legislative effort. We do outreach to (typically) regional sustainability NGOs to explore their interest in promoting PACE, and we need these local partners to assume ownership of a legislative effort in their state. When such opportunities to partner with or support a local effort occur, we provide the following assistance:

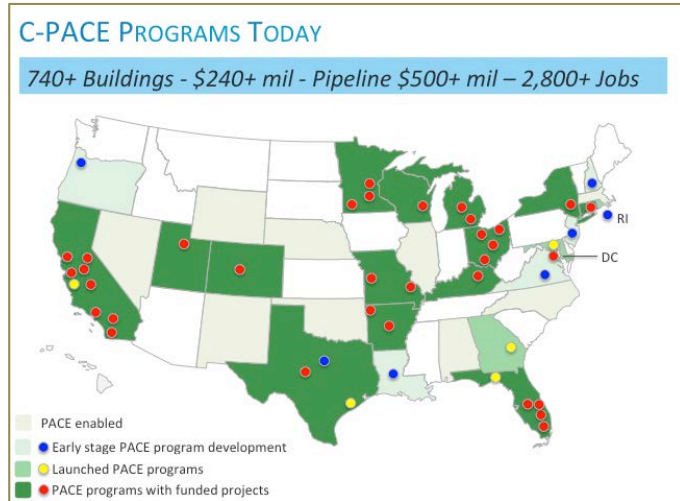
- Legislative Checklist – of measures we believe must be in legislation to make it effective and measures that we believe are best left to program design.
- Bill Analysis and Advice – our staff will review suggested bill language, cross reference to our checklist, and provide direct advice
- Legal Analysis – PACENation will discuss proposed bill language with a designated law firm (paid for by the client) to ensure it accomplishes objectives
- Strategy – PACENation will provide advice on strategy designed to develop coalitions of support (allies) and defuse potential opposition
- Networking – PACENation will use its member network to develop support for legislative efforts
- Education – PACENation is not funded in a way that allows us to lobby. Based on the laws relating to lobbying, we may be able to educate legislators about PACE.

PACE Enabling Legislation Checklist

PACENation is often asked for template PACE enabling legislation or to recommend a model PACE law from those already passed. We’ve come to the conclusion that neither are practical because every state has a unique constitution and body of laws that establish how municipal governments operate within them. Often, things that work in one state don’t work the same way in another. Indeed, some states, including California and New York, have more than one

statute under which PACE can be implemented. When asked for examples of legislation that works, we point to every state where PACE programs have been implemented and projects have been funded. The good news is that PACE can be implemented in many different ways.

We offer the following checklist of things that should be considered when developing legislation. Some things are essential, some will make a PACE law better in our opinion, and some things, as noted, might better be left to program design. Good legislation is a bill that passes, addresses the needs and concerns of all stakeholders, and can result in the broadest possible options in terms of implementation.



We strongly recommend that draft legislation be reviewed by a law firm with special expertise in your state’s municipal laws to ensure that what is intended can be achieved. Many states have passed PACE laws that either don’t work, or need amendments to work better. PACENation is pleased to provide advice on the most important features of PACE legislation. Please feel free to contact us with legislative questions.

In our opinion, A PACE bill must:

- Establish or address the public purpose goals that PACE helps achieve, e.g. energy conservation, avoided costs, environmental concerns, economic development
- Authorize PACE program development by some unit(s) of local government (e.g. a county, city, town, or other jurisdiction can establish a PACE program)
 - Allow local governments offering PACE to do so in concert with others (to promote economies of scale)
- Address program administration
 - Allow programs to be administered by 3rd party providers
- Broadly define qualifying improvements, e.g. those that improve
 - Energy efficiency (EE)
 - Renewable energy onsite generation (RE)
 - Water conservation (WC)
 - Specify that projects must be permanently affixed to the property (because they become part of the building’s collateral value).
 - Require that financing not exceed the useful life of the project
- Establish or describe the mechanism(s) required for a local government to provide or arrange funding for a PACE project that will be repaid with an assessment or similarly binding charge.
 - Defines, as necessary, responsible parties
 - Establishes a benefit district, if necessary.

- Benefit district could be statewide (with municipal opt-in), coterminous with one or more municipalities, or limited to one or more properties (which may or may not be contiguous)
- Require/allow the sponsoring government to impose (or contract with the taxing jurisdiction) a PACE assessment or charge on the subject property that
 - Is a senior lien to mortgages
 - Is collected in the same manner as property taxes
 - Has, ideally, the same lien status as other taxes and assessments
 - Can not be accelerated or extinguished until fully repaid
 - Stays with the property upon sale (runs with the land)
- Allow PACE to fund 100% of a project's hard and soft costs, including audits, project development and application fees
- Establish broad PACE project funding options to allow programs to access project capital from as many sources as possible. These should include:
 - Any funds legally available to the sponsoring government
 - Municipal bonds, taxable or tax-exempt (if eligible), in conjunction with any source of credit enhancement. Typically, revenue bonds secured solely by the PACE assessment payments would be issued by a local government or an authorized authority or local development corporation.
 - Funds provided directly by a third party (including banks and investment firms) in return for the contractual right to receive assessment payments
 - Allow such rights to be assigned
- Allow municipality to impose other fees to offset program administration costs
 - Specifies whether added fees are upfront or add-on to interest rate
- Take into account any differences between types of municipalities, if applicable in terms of rights and processes
 - Ability to establish special benefit district
 - Ability to impose, collect, and enforce assessments or charges

Things that are sometimes included in legislation but might be better left to program design include:

- Ability to pay criteria as qualifications for a building owner to access funds,
 - Property is owned by the applicant, and ownership is not in dispute
 - Current on property taxes, typically for the last three years
 - Current on mortgage, typically for the last three years
 - No outstanding involuntary liens (of a certain size or more)
 - Owner has no history of bankruptcy for a period of years
 - Loan to Value threshold, to establish that the building has equity
 - Including or exclusive of PACE project
- Analytical requirements for participation, such as:
 - Benchmarking¹
 - Audits, and to which standard
 - Savings-to-Investment ratio test (SIR)

¹ Benchmarking and audit requirements can provide building owners with important information about their building's performance and help identify cost effective energy efficiency measures. A growing number of cities have passed laws mandating that buildings of a certain size be benchmarked and audited.

- Loading orders (we recommend these not be included in legislation)
- Projects required to be undertaken in ranked order of savings
 - Project cost to value of property ratio test
 - Measurement & Verification requirements after project implementation
- Prepayment options in the event of sale (allowed in some states, but not in others)
- Lender Notice – existing mortgage lender notice requirement
- Lender Consent – existing mortgage lender must consent to or authorize project²
- Consumer protection notifications

More things to consider

- **Centralized Program Administration:** Establishing a state authority or department of state government to administer or develop program standards and protocols can standardize implementation of PACE throughout a state and make it easier to achieve a range of scale economies.
- **Residential PACE:** PACE legislation adopted prior to the FHFA's July 10, 2010 statement does not generally distinguish between building types. Bills passed or amended following the July 10 statement have all provided authority for commercial buildings (which includes industrial, agricultural, and multi-family housing, and not-for-profits if they can be assessed), and either ignore or exclude single family homes. PACENation supports and endorses a number of residential PACE programs that continue to operate. For further guidance on residential PACE, contact us.

Legislative Strategy

The following should be considered and/or addressed when developing a PACE legislative effort:

- Someone (or some organization) needs to take ownership of the effort, champion it, and lead as comprehensive a campaign as is necessary to maximize the likelihood of passage.
- The PACE bill will need the strongest possible sponsorship in both houses of the legislature, and ideally from the executive branch as well.
- Allies should be recruited for the effort, and these could include real estate owners, energy service contractors, NGOs, trade organizations, and any other groups, organizations or individuals that favor energy efficiency and water conservation measures.
- Potential adversaries should be identified and efforts should be made to address their concerns. These could include banks, mortgage lenders, and the organizations that represent them, public utilities, or other energy producers. In at least one state, an organization representing realtors expressed concerns that PACE would make properties more difficult to sell. PACENow can help frame discussions with these parties to successfully address their concerns.

² Prior to the FHFA's July 2010 statement regarding PACE, laws were silent on consent provisions. Since July 2010, no senior lien PACE law has passed without a provision that gives existing lenders the right to veto projects. While we would prefer that consent be left to program design, in the near term it may not be possible to pass legislation without a consent provision.