

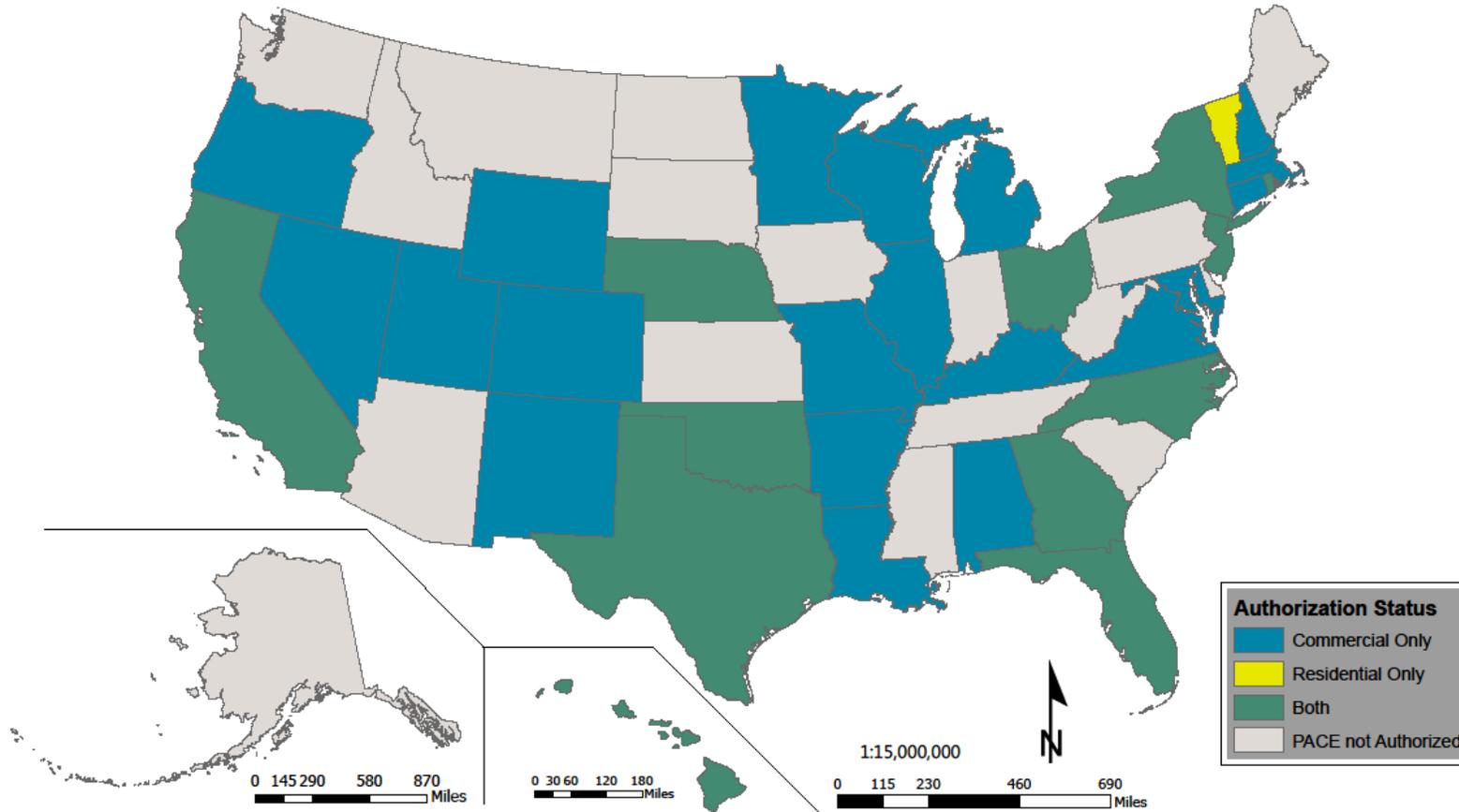
The Property Assessed Clean Energy Act

Introduction to PACE & how it works

What is PACE?

- ▶ PACE is a simple, effective way to finance energy efficiency, renewable energy, and water conservation upgrades to buildings
- ▶ PACE has been authorized in 33 states, including Nebraska
- ▶ Of the 33 states that have authorized PACE
 - ▶ 20 have authorized only commercial PACE
 - ▶ 1 has authorized only residential PACE
 - ▶ 12, including Nebraska, have authorized both residential and commercial PACE

States Which Have Authorized Property Assessed Clean Energy (PACE) Programs



Map Created by Casey Dunn
Sources: PACENation (2016)
05 January 2106

The Property Assessed Clean Energy Act

Nebraska Revised Statute §18-3201 through §18-3211

- ▶ Passed in 2016; went into effect July 21st
- ▶ Provides municipalities with the authority to finance the installation of energy efficiency improvements and renewable energy systems
- ▶ Authorizes the creation of clean energy assessment districts

Legislative Findings

Nebraska Revised Statute §18-3202

- ▶ Energy efficiency and use of renewable energy will help preserve health and economic well-being, decrease cost of living, keep cost of public power low, and create jobs
- ▶ Upfront costs of energy efficiency improvements and renewable energy systems prohibit property owners from making improvements
- ▶ Authorizing municipalities to finance energy efficiency improvements and renewable energy systems serves a public purpose

Key Terms

Nebraska Revised Statute §18-3203

- ▶ “Assessment contract”: contract entered into between municipality, property owner, and (if applicable) third-party lender under which municipality agrees to provide financing for an energy project in exchange for property owner’s agreement to pay annual assessment for period not to exceed weighted average useful life of the energy project
- ▶ “Energy efficiency improvement”: acquisition, installation, or modification benefiting publicly- or privately-owned property that is designed to reduce the utility (electric, gas, water, or other) demand or consumption of the buildings on or to be constructed on the property, or to promote the efficient and effective management of natural resources or storm water

Eligible Energy Efficiency Improvements

Nebraska Revised Statute §18-3203

- ▶ Insulation
- ▶ Storm windows and doors
- ▶ Automated energy control systems
- ▶ HVAC systems
- ▶ Caulking and weatherstripping
- ▶ Replacement/modification of light fixtures
- ▶ Energy recovery systems
- ▶ Daylighting systems
- ▶ Electric vehicle charging outlets
- ▶ Water conservation/pollutant control systems
- ▶ Roofing
- ▶ Energy-efficient fixtures
- ▶ Water heating systems
- ▶ Energy efficiency related items
- ▶ Other cost-saving measures approved by municipality (*Not a comprehensive list!)

Key Terms (cont.)

Nebraska Revised Statute §18-3203

- ▶ “Energy efficiency related item”: repair, replacement, improvement, or modification to real property that is necessary or desirable in conjunction with an energy efficiency improvement
 - ▶ Structural support improvements
 - ▶ Repair/replacement of building components or fixtures
- ▶ “Energy project”
 - ▶ Installation or modification of energy efficiency improvement
 - ▶ Acquisition, installation, or improvement of renewable energy system
 - ▶ Fixture, product, device, or interacting group of fixtures, products, or devices on customer side of the meter that uses one or more renewable energy resources to generate electricity

Qualifying Property

Nebraska Revised Statute §18-3203

- ▶ **Commercial Property**

- ▶ Includes multi-family residential property comprised of more than four dwelling units

- ▶ **Industrial Property**

- ▶ **Single-family Residential Property**

- ▶ May include up to four dwelling units

Renewable Energy Resource

Nebraska Revised Statute §18-3203

- ▶ Defined as a resource that naturally replenishes over time and that minimizes the output of toxic materials in the conversion to energy
- ▶ Includes, but is not limited to:
 - ▶ Nonhazardous biomass
 - ▶ Solar/solar thermal energy
 - ▶ Wind energy
 - ▶ Geothermal energy
 - ▶ Methane gas captured from a landfill, etc.
 - ▶ Photovoltaic systems
 - ▶ Cogeneration/trigeneration systems
- ▶ Does not include petroleum, nuclear power, natural gas, coal, or hazardous biomass

Clean Energy Assessment Districts

Nebraska Revised Statute §18-3204

- ▶ Municipalities may create one or more districts, which may be separate, overlapping, or coterminous
- ▶ Governing body of municipality serves as governing body of district
- ▶ Prior to creating a district, municipality must hold a public hearing (notice by publication 10 days prior to hearing)
- ▶ Ordinance creating district must meet statutory requirements

Ordinance Requirements

Nebraska Revised Statute §18-3204

- ▶ Public purpose finding
- ▶ Assessment contract form
- ▶ Identify official authorized to sign contracts on behalf of municipality
- ▶ Application process & eligibility requirements
- ▶ Explanation of annual assessment process
- ▶ For residential properties, requirement for fixed interest rates/repayment schedules
- ▶ Information regarding debt service and loss reserve funds
- ▶ Information on application, administration, or other program fees
- ▶ Requirement that annual assessment terms not exceed useful life of energy project
- ▶ Requirement that energy efficiency improvements must be conveyed with the property upon transfer
- ▶ Requirement that owners must notify purchasers that they assume responsibility for payment of annual assessments
- ▶ Marketing and participant education provisions
- ▶ Verification that improvements were properly installed and operating
- ▶ Ongoing energy savings measurements for projects over \$250,000

FHA Guidance

- ▶ Nebraska Revised Statute §18-3204 requires that clean energy assessment districts, with respect to single-family residential property, must comply with guidelines issued by the Federal Housing Administration on or after January 1, 2016
- ▶ FHA Guidance was issued on July 19th
- ▶ Interested parties currently examining guidance to ensure statutes comply with requirements, may introduce clean-up legislation in 2017

Assessment Contracts

Nebraska Revised Statute §18-3205

- ▶ After passage of ordinance, municipality may enter into assessment contracts with record owners of qualifying property within clean energy assessment (PACE) district
- ▶ Municipalities may not impose an annual assessment unless the assessment is part of an assessment contract, and collection of annual assessments shall only be sought from the original owners or subsequent purchasers of the property
- ▶ Before entering into an assessment contract, the municipality must obtain verifications from property owners regarding the status of the property and the ability to pay the assessments
- ▶ For non-residential properties, property owners must obtain a consent and subordination agreement from mortgage holders and trust deed beneficiaries before entering into an assessment contract
- ▶ Copies of assessment contracts must be filed with the county assessor and register of deeds in the county where the property is located

Assessment Contract Requirements

Nebraska Revised Statute §18-3205

- ▶ Description of the energy project, including estimated cost of the project and estimated savings
- ▶ Mechanism for verifying the final costs of the energy project and ensuring that any amounts paid by the municipality will not exceed the final cost
- ▶ Agreement by the property owner to pay annual assessments
- ▶ Statement that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall run with the land and be obligations upon future owners of the property
- ▶ Acknowledgment that no subdivision of the property shall be valid unless the assessment contract or amendment to the contract divides the total annual assessments due on a pro rata basis

PACE Liens

Nebraska Revised Statute §18-3206

- ▶ Annual assessments under the Act constitute a lien against the property; Municipalities are required to file a notice of PACE liens in the office of the register of deeds of the county in which the property is located
- ▶ Notice requirements
 - ▶ Amount of funds disbursed or to be disbursed pursuant to the assessment contract
 - ▶ Names and addresses of current property owners
 - ▶ Legal description of the property
 - ▶ Duration of the assessment contract
 - ▶ Name and address of the municipality filing the notice
- ▶ Upon transfer of ownership of the property, the obligation to pay annual assessments runs with the qualifying property

A Bifurcated Process

Nebraska Revised Statute §18-3206

Single-Family Residential

- ▶ Annual assessments constitute a lien upon the initial assessment
- ▶ Liens are subordinate to a first mortgage or trust deed; no consent and subordination agreement required
- ▶ Lien released when all annual assessments, including any interest and penalty, are paid in full
- ▶ Lien survives foreclosure sale

Non-Residential

- ▶ Annual assessments constitute a lien upon becoming delinquent
- ▶ Liens have same priority and status as a property tax lien; owner must obtain consent and subordination agreement from mortgage holders
- ▶ Lien released when delinquent assessments, including any interest and penalty, are paid in full
- ▶ Lien does not survive foreclosure sale

Financing PACE

Nebraska Revised Statute §18-3207 and §18-3209

- ▶ Municipalities may raise capital to finance their PACE programs from three sources
 - ▶ Sale of bonds
 - ▶ Set-aside funds
 - ▶ Third-party lending
- ▶ PACE bonds must be revenue bonds, secured by payments of annual assessments by property owners subject to an assessment contract
- ▶ Statutory lien on annual assessments pledged for bond financing
- ▶ Municipalities may create a debt service reserve fund to be used as security for capital raised to finance PACE

Restrictions on PACE

Nebraska Revised Statute §18-3207

- ▶ Voter approval required in order to:
 - ▶ Issue a bond exceeding \$5 million
 - ▶ Finance an energy project on property owned by the municipality
 - ▶ Finance an energy project on property owned by any other political subdivision
- ▶ Restrictions designed to prevent municipalities from using PACE to exceed other statutory bonding limitations

Loss Reserve Fund

Nebraska Revised Statute §18-3208

- ▶ Municipalities that create a clean energy assessment district must create a loss reserve fund, used to pay:
 - ▶ Delinquent annual assessments in the event of a foreclosure sale on residential property subject to a PACE lien, if proceeds were insufficient to pay the delinquent assessment
 - ▶ A single annual assessment in the event of a foreclosure sale on residential property subject to a PACE lien, if the mortgagee or trust beneficiary becomes the owner of the property and the property is not conveyed prior to the annual assessment becoming due
- ▶ Loss reserve funds may be funded by a variety of sources, but not the municipality's general fund

Whoa, this sounds like a ton of work!



You're Not On Your Own!

Nebraska Revised Statute §18-3210

- ▶ Two or more municipalities may create a joint PACE program using the Interlocal Cooperation Act
- ▶ Two or more municipalities may jointly administer their PACE programs using the Interlocal Cooperation Act
- ▶ Municipalities may contract with a third party for the administration of their PACE program
 - ▶ List of PACE providers available at <http://pacenation.us/pace-service-providers/>

Reporting Requirements

Nebraska Revised Statute §18-3211

- ▶ Any municipality that creates a clean energy assessment district must file an annual report with the Urban Affairs Committee on or before January 31st each year, to be submitted electronically
- ▶ Report must contain:
 - ▶ Number of clean energy assessment districts in the municipality and their location
 - ▶ Total dollar amount of energy projects undertaken
 - ▶ Total dollar amount of outstanding bonds issued
 - ▶ Total dollar amount of annual assessments collected/yet to be collected as of the end of the most recently completed calendar year
 - ▶ Description of the types of energy projects undertaken

Questions? Comments?

Trevor Fitzgerald

Legal Counsel, Urban Affairs Committee

tfitzgerald@leg.ne.gov

(402) 471-2615