



MEMORANDUM TO: Stuart Freudberg
FROM: Lee Ruck
DATE: March 17, 2010
SUBJECT: **Status of Statutory Authority for Local Government
Clean Energy Financing Programs**

You have requested a review of regional authority to support residential energy efficiency through Property Assessed Clean Energy (PACE) Programs. This information has been requested by the Climate, Energy, and Environment Policy Committee for its March 24, 2010 meeting.

PACE programs allow local governments to offer sustainable energy project loans to eligible property owners. Property owners can finance renewable onsite generation installations and energy efficiency improvements through a voluntary assessment on their property tax bills. This approach adds a powerful new option to the clean energy finance landscape.

Property owners benefit by avoiding the upfront installation cost of renewable onsite energy generation systems and efficiency measures and eliminating concerns that they will sell the property before recovering the system investment from utility bill savings. The result is that property owners in participating jurisdictions can finance their greening efforts with a minimal level of financial risk. This approach started in Berkeley, California, with the "Berkeley First Program." A company called Renewable Funding developed a system for financing home solar energy systems and energy efficiency improvements by partnering with the city and adding the cost of the solar systems or improvements onto the homeowner's property tax bill, amortized over twenty years.

A number of jurisdictions are starting to run pilots of this program. States are passing statutes authorizing cities and counties to initiate both pilots and broad-based programs. As of this date Maryland, Virginia, and the District of Columbia have all authorized some version of a PACE Program; like so often the case, each jurisdiction has enacted a version with differing requirements and permissions. This Memorandum and its attachments will briefly set forth each and raise such issues as might be explored with attorneys for each local government.

MARYLAND

In 2009 Maryland authorized local governments to establish a Clean Energy Loan Program. Maryland Code Annotated, *Political Subdivisions*, Section 9-1501 et seq. (Attachment A)

Purpose: To provide loans to residential and commercial property owners for financing of energy efficiency and renewable energy retrofit projects.

Funding Source: Local government funds. General obligation municipal bonds may be issued by the local government for that purpose.

Repayment procedure: Surcharge on the property owner's tax bill. A person who acquires the property before the loan is repaid assumes the obligation to pay the surcharge until discharged. The specifics of the surcharge in amount and duration shall be sufficient to assure repayment to the local government.

Eligibility: The local government shall provide eligibility requirements for both the type of energy projects and the nature or extent of the property.

Note: On April 22, 2009, Montgomery County enacted an ordinance implementing a Home Energy Loan Program pursuant to this statute. Chapter 18A, Article 4, Montgomery County Code. (Attachment B) Proposed implementing regulations are currently submitted for public comment with a due date of April 1, 2010. (Attachment C)

VIRGINIA

In 2009 Virginia authorized localities to authorize contracts to provide loans for the acquisition and installation of clean energy improvements with "willing property owners" for both retrofit and new construction. In 2010 an amendment provided for liens and bundling to facilitate loan repayment. Virginia Code Annotated, Section 15.2-958.3. (Attachment D)

Purpose: Financing clean energy programs.

Funding Sources: Unstated. Presumably federal or state pass through funds or other grant funds. In any such program, private lending institutions must be given the opportunity to participate. It is possible that a local government could create an industrial development authority to issue revenue bonds for this purpose under Virginia Code Annotated, Section 15.2-4905.1. Local government funds cannot be loaned directly to property owners; however, they may possibly be given to a non-profit created for the purpose of implementing the provisions of this program. Formal local attorney legal opinions (or Attorney General Opinions) should be obtained before proceeding on the latter two funding courses.

Repayment procedure: Loan payments may be combined with billings for water or sewer or real estate taxes. Loans will operate as liens against the properties. Transfer of the property will in all likelihood accelerate loan repayment as part of settlement. The Ordinance will set forth repayment requirements for local government administration.

Eligibility: The ordinance will set forth the nature or types of energy installations, the nature of the properties, and the loan requirements.

DISTRICT OF COLUMBIA

Earlier this week the District of Columbia Council enacted the Energy Efficiency Financing Act of 2009, Bill No. 18-0580, to provide funding for the installation of energy efficiency and renewable energy retrofits and improvements. (Attachment E)

Purpose: To provide the authority and means to provide loan funds for the initial installation of energy efficiency improvements permanently attached to residential or commercial property and to establish a workforce development program designed to train persons in the various elements of ascertaining need for and installing such improvements.

Funding Source: The Act authorizes issuance of revenue bonds and creates a revolving loan fund from the proceeds of such bonds.

Repayment procedure: Each loan shall be repaid by a special assessment on each lot owned by the borrowing property owner in the amount of principal, interest, and administrative payments due, and shall be collected as an addition to the real estate tax payments and schedule.

Eligibility: The Act sets forth the nature and type of properties and improvements that can be the subject of loans, as well as the loan requirements.