

AGENDA

Joint Meeting

Eau Claire County
Committee on Administration
Committee on Finance and Budget

721 Oxford Avenue
Eau Claire County Courthouse – Room 1301/1302
Eau Claire, WI 54703

Tuesday, March 29, 2016 / 4:30 pm

1. Call Meeting to Order
2. Review Proposed Ordinance #15-16/135 - To Create Chapter 4.25 of the Code: Property Assessed Clean Energy (PACE) Financing Ordinance – Discussion/Action
3. Adjourn (pg. 2-11)

Post: March 25, 2016

Copy: media, Committee on Administration members, Kathryn Schauf

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of individuals with disabilities through sign language, interpreters or other auxiliary aids. For additional information or to request the service, contact the County ADA Coordinator at 839-4710, (FAX) 839-1669 or 839-4735, tty: use Relay (711) or by writing to the ADA Coordinator, Human Resources, Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, WI 54703.

**FACT SHEET
TO FILE NO. 15-16/135**

This ordinance creates the Property Assessed Clean Energy program and outlines authority, loan approval, remittance of special charges, sale of foreclosed property, distribution of foreclosure proceeds, etc.

PACE (Property Assessed Clean Energy) is an innovative program that enables property owners to obtain low-cost, long-term loans for energy-efficiency and water conservation improvements. PACE loans help property owners overcome financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties. Improvements financed using PACE can generate positive cash flow upon completion with no up-front, out-of-pocket costs to property owners. The PACE statute enables the county to impose a special charge on real property to secure loans made for energy efficiency, water conservation and renewable energy improvements.

There is no fiscal impact to the county.

Respectfully submitted,



Sharon Rasmusson
County Administrator's office

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3 - TO CREATE CHAPTER 4.25 OF THE CODE: PROPERTY ASSESSED CLEAN
4 ENERGY FINANCING ORDINANCE -
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6 The County Board of Supervisors of the County of Eau Claire does ordain as follows:
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8 CHAPTER 1. That Chapter 4.25 of the code is created to read:
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10 Chapter 4.25
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12 PROPERTY ASSESSED CLEAN ENERGY FINANCING
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14
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16 Chapters:
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- 18 4.25.001 Purpose.
- 19 4.25.010 Definitions.
- 20 4.25.020 Statutory authority.
- 21 4.25.030 PACE loans as special charges; delinquent amounts as liens.
- 22 4.25.040 Wisconsin Pace Commission.
- 23 4.25.050 Loan approval.
- 24 4.25.060 Supplemental agreement.
- 25 4.25.070 Annual installments added to tax rolls.
- 26 4.25.080 Remittance special charges.
- 27 4.25.090 Property tax foreclosure procedures.
- 28 4.25.100 Sale of foreclosed property.
- 29 4.25.110 Distribution of foreclosure proceeds.
- 30 4.25.120 Ordinance electing to proceed under Wis. Stat. § 75.521, in relation to
31 enforcement of collection of tax liens.
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36 4.25.001 Purpose. The County finds that renovations or additions to premises located in
37 the County made to improve energy efficiency, improve water efficiency, and/or use renewable
38 resource applications, increase property values, stimulate local economic activity, provide local
39 and global environmental benefits, and promote the general welfare of County residents. The
40 purpose of this Chapter is to facilitate loans arranged by property owners or lessees to make such
41 improvements by treating loan principal and interest, fees, and other charges as special charges
42 eligible for inclusion on the tax roll for these properties.
43

44 4.25.010 Definitions.

45 A. "Annual installment" means the portion of the PACE loan that is due and payable
46 for a particular year under the supplemental agreement.

47 B. "Borrower" means the property owner or lessee of the subject property that
48 borrows the proceeds of a PACE loan.

1 C. "Default loan balance" means the outstanding balance, whether or not due, of a
2 PACE loan at the time that the County receives foreclosure proceeds.

3 D. "Foreclosure proceeds" means the proceeds received by the County from the
4 disposition of a subject property through an in rem property tax foreclosure.

5 E. "Loan amount" means the principal, interest, administrative fees (including the
6 Program Administrator's fees) and other loan charges to be paid by the borrower under the
7 PACE loan.

8 F. "PACE" means the acronym for property assessed clean energy.

9 G. "PACE default provisions" means:

10 1. The delinquent annual installment(s) due when the County initiates the in
11 rem property tax foreclosure on the subject property;

12 2. Any additional annual installment(s) that become due between the time
13 that the County initiates in rem property tax foreclosure on the subject property and the date the
14 County receives the foreclosure proceeds;

15 3. Any default interest charges applied to unpaid annual installments
16 referenced in subs. (1) and (2) above, as provided in the supplemental agreement; and

17 4. Any default loan balance.

18 H. "PACE lender" means any person that makes a PACE loan, and which may
19 include an affiliate of the borrower.

20 I. "PACE loan" means a loan made by a PACE lender to a borrower under this
21 Chapter for energy efficiency improvements, water efficiency improvements, or renewable
22 resource applications made to or installed on a subject property.

23 J. "Person" means any individual, association, firm, corporation, partnership,
24 limited liability company, trust, joint venture or other legal entity, or a political subdivision as
25 defined in Wis. Stat. § 66.0627.

26 K. "Program Administrator" means the person retained by the Wisconsin PACE
27 Commission as provided in 4.25.040 B.

28 L. "Subject property" means any premises located in the County on which energy
29 efficiency improvements, water efficiency improvements, or renewable resource applications are
30 being or have been made and financed through an outstanding PACE loan.

31 M. "Supplemental agreement" means a written agreement among a borrower, a
32 PACE lender and the County, as provided for in 4.25.060.

33 N. "Wisconsin PACE Commission" means the Wisconsin PACE Commission to be
34 formed under Wis. Stat. § 66.0301, as amended, by the County and one or more other political
35 subdivisions as defined in Wis. Stat. § 66.0627, pursuant to a Joint Exercise of Powers
36 Agreement relating to the Wisconsin PACE Commission, as amended.

37
38 4.25.020 Statutory authority. This Chapter is enacted pursuant to Wis. Stat. § 66.0627, as
39 amended, which authorizes a county to make a loan or enter into an agreement regarding loan
40 repayments to a 3rd party for owner-arranged or lessee-arranged financing, to an owner or a
41 lessee of a premises located in the County for making or installing an energy efficiency
42 improvement, a water efficiency improvement or a renewable resource application to a premises.
43

44 4.25.030 PACE Loans as Special Charges; Delinquent Amounts as Liens. Any PACE
45 loan made and secured pursuant to this Section shall be considered a special charge on the
46 subject property. Any annual installment or portion of a PACE loan made and secured pursuant

1 to the Section that becomes delinquent according to the terms of the PACE loan shall be a lien
2 against the subject property and placed on the tax roll, as permitted pursuant to Wis. Stat. §
3 66.0627 as amended.

4
5 4.25.040 Wisconsin PACE Commission.

6 A. Any of the powers and duties of the County under this Chapter, except for those
7 under 4.25.080, may (but are not required to) be delegated to the Wisconsin PACE Commission.

8 B. The Wisconsin PACE Commission is further authorized to retain a Program
9 Administrator to act as its agent and administer the PACE program, subject to adherence with
10 PACE program requirements consistent with this Chapter and in Wis. Stat. § 66.0627, as
11 amended.

12
13 4.25.050 Loan approval.

14 A. A prospective borrower applying for a PACE loan shall comply with the loan
15 application process set forth in the program manual approved by the County.

16 B. The County shall approve the financing arrangements between a borrower and
17 PACE lender.

18
19 4.25.060 Supplemental agreement.

20 A. The County, the borrower and the PACE lender shall execute the supplemental
21 agreement which, without limitation:

22 1. Shall inform the participants that the PACE loan amount shall be imposed
23 as and considered a special charge, and each year's annual installment may be included on the
24 property tax roll of the subject property as a special charge and an annual installment that is
25 delinquent shall be a lien against the subject property pursuant to Wis. Stat. § 66.0627, as
26 amended;

27 2. Shall recite the amount and the term of the PACE loan;

28 3. Shall provide for the amount, or a method for determining the amount, of
29 the annual installment due each year;

30 4. Shall provide whether default interest may be applied to unpaid annual
31 installments;

32 5. Shall require the PACE lender and the borrower to comply with all
33 federal, state and local lending and disclosure requirements;

34 6. Shall provide for any fees payable to the County and/or Program
35 Administrator;

36 7. Shall recite that the supplemental agreement is a covenant that runs with
37 the land;

38 8. May provide for prepayments of annual installments by the borrower with
39 a resulting reduction in the special charge for the prepayment, subject to any prepayment
40 premium charged by the PACE lender, if any; and

41 9. May allow for amendment by the parties.

42 B. Prior to executing the supplemental agreement, the owner of the subject property,
43 if different from the borrower, and any existing mortgage holder(s) on the subject property must
44 have executed a separate writing acknowledging the borrower's use of PACE financing for the
45 subject property and the special charge that will be imposed under this Chapter and its
46 consequences, including the remedies for collecting the special charge.

47 C. Each PACE loan shall be amortized over the term of the PACE loan as provided
48 in the supplemental agreement.

49 D. The annual payments of a PACE loan may be payable in installments as

1 authorized by Wis. Stat. § 66.0627, as amended.

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3 4.25.070 Annual installments added to tax rolls. Upon the request of the Program
4 Administrator the County shall place each year's annual installment on the tax roll for the subject
5 property as permitted pursuant to Wis. Stat. § 66.0627, as amended.

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7 4.25.080 Remittance of special charges. The County shall promptly remit to the
8 Wisconsin PACE Commission any payment(s) for a special charge imposed under this Chapter,
9 including penalties, interest and charges thereon, it may receive from any taxing district or the
10 County treasurer pursuant to Wis. Stat. Ch. 74, as amended.

11
12 4.25.090 Property tax foreclosure procedures.

13 A. The County elects to utilize the provisions of Wis. Stat. § 75.521, as amended, for
14 the purpose of enforcing tax liens if a subject property owner fails to pay any special charges
15 imposed on the subject property under this Chapter as required.

16 B. The County shall begin an in rem property tax foreclosure proceeding on the
17 subject property at the earliest time allowed under Wisconsin Statutes, unless the County
18 determines that subject property is a "brownfield" (as defined in Wis. Stat. § 75.106, as
19 amended) or that in rem property tax foreclosure is not in the best interests of the County due to
20 the condition of the property or for other reasons.

21 C. If the County has determined that it will not commence an in rem property tax
22 foreclosure proceeding, then the PACE lender may request that the County, pursuant to Wis.
23 Stat. § 75.106, as amended, assign the County's right to take judgment against the subject
24 property, provided that the PACE lender and the County fully comply with all provisions of Wis.
25 Stat. § 75.106, as amended, concerning the subject property and the PACE lender agrees to pay
26 the amounts required by Wis. Stat. § 75.36(3)(a)1 and 1m, as amended.

27
28 4.25.100 Sale of foreclosed property. If the County prevails in an in rem property tax
29 foreclosure action against a subject property, the County shall diligently proceed to sell the
30 subject property pursuant to the procedures set forth in Wis. Stat. § 75.69, as amended.

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32 4.25.110 Distribution of foreclosure proceeds. The County treasurer shall follow the
33 procedures set forth in Wis. Stat. § 75.36, as amended, to distribute the proceeds from the sale of
34 a subject property.

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36 4.25.120 Ordinance electing to proceed under Wis. Stat. § 75.521, in relation to
37 enforcement of collection of tax liens. From and after January 1, 2017 the County elects to adopt
38 the provisions of Wis. Stat. § 75.521, as amended, for the purpose of enforcing tax liens in such
39 County in the cases where the procedure provided by such Chapter is applicable.

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ADOPTED:

Greg Brown
Donald Wilkie
John Mungall
Deleen Bates
Kathleen Clark

Committee on Administration
Date: 3/8/16

Committee on Finance & Budget
Date: 3/10/2016

KRZ/yk

ORDINANCE/15-16.135

APPROVED BY
CORPORATION COUNSEL
AS TO FORM

Wisconsin PACE Commission Overview

What is Property Assessed Clean Energy (PACE)?

PACE, or property assessed clean energy, is an innovative program that enables property owners to obtain low-cost, long-term loans for energy-efficiency and water conservation improvements. PACE loans help property owners overcome financial barriers that typically discourage investment in water conservation and energy efficiency retrofits to existing properties. Improvements financed using PACE can generate positive cash flow upon completion with no up-front, out-of-pocket cost to property owners.

What is the legal authority for PACE in the State of Wisconsin?

PACE financings are authorized in the State of Wisconsin pursuant to Section 66.0627(8), (the "PACE Statute"). The PACE Statute enables "political subdivisions" (counties, cities, towns and villages) to impose a special charge on real property to secure loans made for energy efficiency, water conservation and renewable energy improvements.

What is the Wisconsin PACE Commission Joint Powers Agreement?

For an individual unit of government, creating a PACE program from the ground up can be time consuming and resource-intensive. Fortunately, local governments have available a more efficient option to collectively administer a single statewide PACE program in a more cost effective manner. Wisconsin counties and municipalities have the option to enter into a joint exercise of powers agreement under Wisconsin Statute § 66.0301 (the "JPA"), by which they agree to form a Wisconsin PACE Commission (the "PACE Commission"). County members agree to adopt a Model PACE Ordinance (discussed below), and to delegate to the PACE Commission the ability to impose PACE special charges according to a single, uniform statewide PACE program in the County members' jurisdiction. Municipal members (cities, villages, and towns) join the PACE Commission, participate in its governance, and agree to support the uniform statewide PACE program.

How does the Model PACE Ordinance work?

County members agree to adopt a Model PACE Ordinance as a condition of joining the PACE Commission. Among other powers, this ordinance authorizes the County to impose a PACE special charge, collect payments for the special charge in installments, place those installments on the tax roll at its discretion, and delegate that authority to the PACE Commission.

What powers are given to the Wisconsin PACE Commission?

Participating Counties and Municipalities will delegate to the PACE Commission the power to administer a PACE program in their jurisdictions, which will include creating PACE program guidelines, PACE Project qualification and general program oversight. County Members will delegate the additional powers to impose special charges as part of PACE Projects and collect the installments for the PACE Project loans. The statewide PACE program is then administered by a third party, Wisconsin nonprofit organization,

responsible for handling day-to-day PACE financing application reviews and approvals, as well as payment collections on behalf of the PACE Commission.

Overview of a County Member's Responsibilities as a Member of the Wisconsin PACE Commission

Can a County impose a PACE Special Charge on real property?

Yes, see above: **What is the legal authority for PACE in the State of Wisconsin?**

Who is the PACE Lender?

The PACE Statute authorizes two sources for financing PACE loans – third-party financing (including banks and other private lenders) and public financing by a political subdivision. There is private capital available for PACE Loans and it is anticipated that this will be the predominant source of financing. Local governments retain the option to make available public funds to fund PACE Loans for qualified PACE Projects, though this will not be a requirement for the Wisconsin PACE Commission.

Once a PACE Loan is closed who imposes the PACE Special Charge?

The PACE Program Administrator will approve PACE transactions pursuant to the Program Guidelines, which guidelines will be subject to approval by the Wisconsin PACE Commission board of directors. The Program Administrator will then record a Supplemental Loan Agreement with the register of deeds in which the subject real property sits. The Supplemental Loan Agreement is a contract between the PACE Commission, the PACE Lender and the Borrower that memorializes for the public record that there is a PACE Loan and Special Charge outstanding against the Borrower's real property, among other terms.

How is the annual installment of the PACE Special Charge calculated?

The annual installment of a PACE Loan is equal to the annual repayment obligation under the terms of the PACE Loan, which amount may include interest and other fees pursuant to a Loan Agreement between the PACE Lender and Borrower. The PACE Loan may have a loan term up to the useful life of the equipment and improvements being financed.

Where is the annual installment for the PACE Loan collected?

The PACE Statute provides for a "direct billing" system in which the PACE Lender may collect payments for the PACE Loan directly from the Borrower without involving the political subdivision that imposed the Special Charge. Following the close of a PACE Loan, the PACE Lender would certify to the Program Administrator the annual PACE installments that are due. The Program Administrator then works with a Servicer to bill for and collect the annual installment payments from the PACE Borrower. Upon each installment payment, the Program Administrator's Servicer would certify that payments have been made and remit the installment payments collected directly to the PACE Lender.

What happens if the PACE special charge is delinquent?

The PACE Statute establishes that a delinquent PACE Special Charge becomes a lien on the property, with same priority as a special assessment. Upon a default, the Servicer and PACE Lender would certify the amount of the delinquency to the Program Administrator, who would then work with the appropriate County and municipality to place the amount of the PACE Loan delinquency on the next available tax roll for collection pursuant to the existing Wisconsin statutory tax collection procedures in Wisconsin Statutes Chapters 74 and 75.

Does the County have to settle the Special Charge with the PACE Lender.

No. To participate in the program, PACE Lenders recognize that neither the Wisconsin PACE Commission nor its Members have an obligation to settle or reimburse PACE Special Charges to PACE Lenders.

Does the County have to settle delinquent PACE Special Charges to the municipality?

No. Since the source of funds for the PACE Loan secured by the Special Charge will be a private third-party, the County will have no basis to settle the PACE Special Charges with the municipality in which the encumbered property is located.

When is a Tax Certificate issued for a delinquent PACE Special Charge?

A Tax Certificate for a delinquent PACE Special Charge is issued at the same time that a Tax Certificate would be issued for any other delinquent property taxes. If there are multiple tax delinquencies that would be the subject of a Tax Certificate (which would likely be the case in the event of a PACE Special Charge delinquency), all delinquent amounts would be evidenced by the same Tax Certificate. The redemption period for a special charge Tax Certificate is the same two year redemption period for any other Tax Certificate.

What does the County have to do if the delinquent PACE Special Charge reaches a tax foreclosure?

If after the two year redemption period the Special Charge delinquency evidenced by the Tax Certificate is not paid, then the County would be responsible for instituting foreclosure proceedings on the tax certificate, except in the case of a "brownfield" or other concerns with the property leading the County to a good faith determination that it would not be in the County's best interest to foreclose.

What if the County determines that it will not bring a foreclosure on the property?

If the County does not bring a foreclosure action against the subject property, then the PACE Lender is authorized by the PACE Ordinance to bring a foreclosure on the PACE Special Charge in place of the County. To assume this authority, the PACE Lender must agree to comply with all of the statutory procedures for a tax foreclosure.

Why does the PACE Ordinance favor the In REM tax foreclosure process?

The *in rem* foreclosure procedure is an electable procedure pursuant to Wis. Stat. § 75.521. In addition to uniformity, the PACE Ordinance requires that the County utilize this procedure to foreclose upon a PACE Special Charge because of the statutory presumption Wis. Stat. § 75.521(12) gives to the validity of special charges (as well as all special assessments and taxes) and the liens thereof.

How does the County sell tax delinquent property?

The County follows the procedure for the sale of delinquent real estate as laid out in Wis. Stat. § 75.69

What is the priority of distribution of the proceeds of the sale of the real property from a tax foreclosure sale?

The County follows the procedure for the distribution of proceeds as laid out in Wis. Stat. § 75.36.

Following the County's tax foreclosure sale what happens to the outstanding balance of the PACE Loan?

The PACE Special Charge is foreclosed out. Therefore, the PACE Loan no longer encumbers the real property. The Supplemental Loan Agreement, however, may contain terms which require the County to pay over any surplus proceeds from a foreclosure sale to the PACE Lender, up to the deficiency balance of the PACE Loan.