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PACE Program Coming to Pennsylvania

On June 12, 2018, Governor Tom Wolf signed Senate Bill 234, as Act 30 of 2018 (the “PACE Act”) which would bring a Property Assessed Clean Energy (“PACE”) program to the Commonwealth. The PACE Act becomes effective in 60 days. Pennsylvania’s PACE program will provide a means of financing clean energy projects, water conservation projects or alternative energy systems in a defined district through a tax assessment on the real property in the district.

Purpose of a PACE Program

The purpose of the PACE Act is to provide owners of agricultural, commercial and industrial properties with low-cost, long-term financing for energy efficiency, water conservation and renewal energy projects. All residential properties, including multi-family housing projects, are excluded from participation in a PACE program.

Establishment of a Program

A PACE program may be created by a municipality with a community or economic development department or a county by adopting an ordinance or resolution. The ordinance or resolution would create the program, define the district to which the program applies and other operational standards and guidelines. A county that creates a PACE Program must notify any municipality that may be in the district of the municipality’s possible inclusion in the district before the county approves the ordinance or resolution creating the district.

How a Program will Work

The real property in the district to which the PACE program applies are subject to an additional property tax assessment to fund a local financing or owner financing of qualified projects. A qualified project

is an improvement to real property that is a clean energy project, water conservation project or alternative energy system that generates measurable energy savings or reductions in water usage. A local financing of a PACE project can be done through bonds provided or facilitated by a governmental entity or authority, provided that the local financing bonds may not be general obligation bonds of the governmental entity or authority. A financing of a PACE project can also be provided by an owner or third-party provider, including a power purchase agreement, or through private activity bonds. An owner of real property in a district must sign an agreement with the applicable taxing authority or district agreeing to the assessment.

Each qualified project in a PACE district requires as scope of work, energy or water usage baseline and the projected energy or water usage savings in order to establish the project's viability.

Municipalities or counties establishing a program must post online and make available to the public a notice of each qualified project financed through an assessment. The notice must contain the legal description of the property, the total amount of the qualified project and a complete description of the qualified project, the assessment needed to satisfy the bond, the financing rate of the bond, the total amount of the bond financing and any financing charges associated with the bond.

The assessments are collected by the applicable municipality or county using their present tax collection process and payments are remitted for payment of local or owner financings. Unpaid and delinquent assessments are collected in the same manner as delinquent real property taxes. Delinquent PACE assessments are a first lien on the real property.

PACE Program Effect on Financial Institutions

Before a property may be subject to a PACE assessment under a program, notice must be given to any financial institution holding a mortgage or other security interest in the property of an owner's intent to participate in the PACE program. After receipt of notice, the lender must acknowledge in writing to the owner and

municipality or county that the lender received notice. A property subject to a mortgage or other security interest in favor of a financial institution may not participate in a PACE program unless the financial institution provides written consent to the property's participation in the program to the owner and the municipality or county that established the program.

For more information, please contact [Steven Regan](#) or any other attorney in Frost Brown Todd's [Finance and Real Estate Practice Group](#).

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