



CREATING THE FIRST PACE DISTRICT IN TEXAS

Texas City Efficiency Leadership Council Best Practice

Travis County: Creating the First PACE District in Texas

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Introduction

One of the barriers to energy and water efficiency projects is the lack of appropriate financing. Fortunately, the Texas Legislature passed a bill ([SB 385](#)) enabling local governments to create property assessed clean energy (PACE) districts. PACE is a voluntary program allowing property owners to make energy and/or water-related improvements and pay for them over a period of up to 20 years through an assessment on their property. To date, commercial properties across the United States have completed projects worth \$100 million; another \$400 million worth of projects are in the national pipeline. In March of 2015, Travis County became the state's first local government to establish a PACE district. In the process, the commissioners court, tax assessor-collector and attorney created documents that other local governments can use to set up their own districts.

The purpose of this case study is to help local governments in Texas that are considering the creation of a PACE district. For general information on PACE, visit the [Keeping PACE in Texas](#) and [PACE Now](#) websites.

Creating PACE Districts in Texas

With the enactment of Senate Bill 385 ([Title 12 Local Gov. Code 399.001](#)), Keeping PACE in Texas began working with hundreds of experts to design a robust set of program guidelines allowing consistent implementation of PACE statewide. The hope is that the similarity among programs will reduce costs and make PACE projects more appealing to potential building owners, project developers, lenders and investors.

The outcome of Keeping PACE in Texas' efforts is the [PACE in a Box](#) toolkit that can be used by local governments and administrators around the state. The toolkit contains all of the design elements, documents and implementation steps necessary for a local government to establish an effective PACE program quickly and economically.

A standardized implementation model provides two significant benefits. First, the cost of program design and implementation decreases considerably. Much of the required documentation including a resolution, report and sample contracts, is already developed. Second, standardization benefits lenders, project developers and property owners by giving them a uniform program structure in each jurisdiction in which they operate.

The Experience of Travis County: The First PACE District

In April 2015, the Travis County Commissioners Court voted to support the creation of the state's first PACE district. Keeping PACE in Texas led the effort along with a variety of PACE advocates who worked with the county to implement the program. With the PACE in a Box toolkit, much of the effort focused on educating lawmakers about PACE and the benefits it could provide to the county and its communities. To educate policymakers, Keeping PACE in Texas and its supporters held multiple face-to-face meetings with lawmakers and county employees, as well as several town hall-style meetings. To facilitate this educational effort, Keeping PACE in Texas developed a volunteer packet containing marketing and educational material.

Steps to Creating a PACE District

Keeping PACE in Texas and its volunteers made significant efforts to create the first PACE district in Travis County. The actual steps¹ to creating the district were few; however, there was considerable legwork that had to be done to ensure that all of the requirements were met for creating a district. To do so, Travis County developed a [PACE report](#) as required by the statute. This report describes the characteristics of the PACE district.

Upon completion of the report, the county filed a [resolution of intent](#). Commissioners passed the resolution unanimously on Feb. 17, 2015, and a public hearing was held on March 24. In attendance were representatives from the State Energy Conservation Office (SECO), South-central Partnership for Energy Efficiency as a Resource (SPEER), the Thompson and Knight law firm, Keeping PACE in Texas, Simon Properties and Petros Capital. They all spoke in favor of the district with no opposition. There were also many letters of support

STEPS TO CREATING A PACE DISTRICT



presented to the commissioners for their review. After the hearing, commissioners introduced and passed the resolution to create a PACE district in Travis County.

During the time in which the PACE report and resolutions were under development, the Travis County Attorney's Office and Keeping PACE in Texas also created the contracts required for PACE projects. The two primary contracts are between the **lender and the county** and between the **county and the building owner**. The building owner and lender will also have a contract — a private-party agreement that does not involve the local government. The county is responsible for signing all contracts with both the lender and the property owner. **A final document** establishes the loan as an assessment lien. This document establishes that the owner is voluntarily placing an assessment on their property and must make payments until the loan is paid in full.



Program Administration

As Travis County was the first county to adopt PACE, there were questions about the mechanics of running the program. Some of the more significant concerns related to program administration. The statute allows the program to be operated by the local government or by a third-party administrator. The county did not have the funds or personnel to administer a new PACE program, so it needed a third party. A variety of third-party administrator programs including councils of government, the private sector and not-for-profits have been considered and implemented across the nation.² Travis County decided to use a 501(c)(3) entity, the **Texas PACE Authority (TPA)**, designed solely to administer PACE programs. The non-profit organization plans to administer programs across the state, allowing for standardized administration. Further, it is anticipated that the not-for-profit model will be a less costly option, thereby reducing total project overhead.

As the PACE district began taking shape, TPA and Travis County started developing an interlocal agreement by which TPA would be the third-party administrator. When considering this agreement, questions arose as to whether the county could choose a third-party administrator without going through a competitive bidding process. The Commissioners Court determined that because no funds were being spent by the county on the project, nor would the county pay any monies to TPA, the county could choose whomever it deemed to be the most appropriate administrator for the program.

Project Funding

The PACE statute allows local governments to issue bonds or use other public funding to finance projects. It also allows local governments to require property owners to obtain financing in the private market. The expectation is that the private sector can provide lower cost financing than the county for these projects.

Another financing-related concern was the servicing of the PACE loan. Local governments typically collect taxes annually; lenders are more accustomed to monthly and quarterly payments. With the county collecting on the loan, the loan collection cycle would follow the yearly property tax collection cycle. Consequently, and also to lessen its own administrative requirements, Travis County decided to have private sector lenders service PACE loans. The private lenders and property owners would determine the servicing schedule during financing negotiations. The benefits of such an arrangement are private sector servicing and lower loan costs overall.

Although having the lenders provide servicing was deemed the most efficient method, there was concern about whether building owners, particularly those who buy a building that has an existing PACE lien, would understand that the loan is an assessment which they must pay. There was considerable discussion of how the PACE loan would be presented to the property owner. A PACE loan is a voluntary assessment and not a tax, so Travis County determined that PACE loans needed to be billed and handled separately from tax bills.

PACE program participants were concerned that not having the assessment appear directly on the tax bill might cause the PACE loan to seem less credible, leading to a decreased collection rate. After meeting with several PACE customers who argued for the loan to be listed on the tax bill, Travis County officials reached a compromise: The tax assessor-collector will send out an annual notice of assessment to each owner in conjunction with, or simultaneously with, the tax notice. The assessment notice would not be on the tax bill but would appear on the assessor-collector's letterhead.

There was also concern over how to deal with non-performing loans. PACE loans historically have a very low default rate, but defaults can happen nonetheless. Travis County decided that if a property owner stops paying on a PACE loan, the lender initially will send two letters of delinquency to the owner. If no payment is made, then the lender can ask the tax assessor-collector to initiate collection procedures. The assessor-collector has a regular on-call lawyer who does collections when needed. Within the existing tax code, the assessor-collector's office already

¹ All of the Travis County documents are available at www.traviscountytx.gov/pace. Editable versions are available for download here: <http://www.keepingpaceintexas.org/links-and-resources/library/>

² For a complete overview of various administrative structures including fees, interest rates and more, see *Commercial PACE in Texas and Beyond: A Deeper Dive into Program Administration* by the Lawrence Berkeley National Lab.

receives compensation to conduct this type of collection. The assessor-collector's office did not feel that the caseload from PACE loans would be significant and believed that it could fit any delinquencies into its current workload.

If the loan is collected through the courts, the county will collect for the lender and charge an administrative fee, which is remitted to the district administrator. The county will retain statutory fees and interest.

Developing and Implementing a PACE-financed Project

Below is the project flow process agreed upon by TPA and Travis County. The TPA established a **comprehensive list of tasks** the project owner must complete prior to submitting an application, as well as additional items required throughout the entire implementation process. Initially, TPA reviews PACE applications to ensure that they meet the appropriate criteria. The application is completed and submitted once an energy efficiency project has been largely scoped out. Once accepted by TPA, property owners must find their own lenders who determine whether proposed projects meet their underwriting standards. During this time, TPA must obtain consent from the mortgage holder for the project to proceed. The TPA also ensures that the appropriate third-party engineering review is conducted. The review ensures that the project will realize anticipated energy savings through implementation of the proposed energy conservation measures.

Once the loan is secured, the application approved and mortgage holder consent obtained, TPA presents the project to the tax assessor-collector. The assessor-collector signs the owner and lender contracts, and the owner has the improvements installed. The owner then has a third party review of the completed project to ensure that all measures were installed properly and are functioning as designed. The TPA then signs off on the review and deems the project complete. The lender collects payments for the project loan; no funds go to Travis County. The TPA only receives application fees and a percentage of the interest. Payments are made until the loan is paid off. At that point, the TPA and tax assessor-collector confirm that payment has been made in full, and the assessment on the property ends.

Conclusion

PACE is creating significant opportunities for jurisdictions across the country to spur economic development through increased investment in energy efficiency. Travis County's groundbreaking PACE district is a model for other Texas cities and counties. A multitude of stakeholders were involved, doing much of the "heavy lifting" required to create a successful district. Now, with minimal cost and effort, other local governments can use the report, resolutions and contracts created by the Travis County Attorney's Office, the Travis County Tax Assessor-Collector's Office, Keeping PACE in Texas and hundreds of experts and volunteers to help them pick up the PACE.

STEPS FOR DEVELOPING AND IMPLEMENTING A PACE FINANCIAL PROJECT

