

PACE Rulemaking Survey

Response #1

1. Do you believe that a State Regulation is needed to clarify the definition of energy efficiency improvement or renewable energy improvement?

Only if there is a way to include water efficiency into the energy efficiency.

2. Why or why not?

Water efficiency efforts naturally go with energy efficiency and renewable energy projects, specifically in cost saving renovations.

3. If so, specifically what needs to be clarified and how would you do it?

Only that energy efficiency as mentioned statute would include water efficiency as it does save energy at the property owners location as well as for generators/providers and municipalities delivering or cleaning the water.

4. What problem does the clarification address in Missouri?

It would allow low flow shower heads, fire suppression systems or automatic systems for commercial properties.

5. Are there other ways to address the problem?

We don't believe so.

6. What information (data, studies, examples, etc.) support the need for the clarification? If possible, please provide copies, citations or links to such information.

None.

7. What is the cost of the clarification to businesses, consumers or others?

None – would be beneficial to property owners.

8. What is the benefit of the clarification

It would allow low flow shower heads, fire suppression systems or automatic systems for commercial properties.

9. Is the clarification currently addressed by federal, state or local law, regulation, guidance or ordinance? If so, please provide citations, links or copies if possible.

no

10. Additional comments:

We do not believe prescriptive rules or extensive listing of energy efficiency project components or their savings would be wise. As each project is different based on property owner, utility provider and geographic location of the property.

PACE Rulemaking Survey

Response #2

1. Do you believe that a State Regulation is needed to clarify the definition of energy efficiency improvement or renewable energy improvement?

We believe that a state regulation is not necessary given the level of detail provided in the statute. However, a regulation could be helpful in providing clarity to expand the universe of improvements specifically enumerated within the statute as being designed to “reduce energy consumption” of the relevant properties (RSMo 67.2800.2(6)).

2. Why or why not?

The government is acting as a collection agent for the PACE financing and additional guidance on qualified improvements or the methodology that is acceptable for a clean energy development board to make required findings under the statute will reduce the risk of future issues impacting assessors, collectors, municipalities, etc.

Interpretive guidance from the Authority could be more beneficial and timely than rulemaking, as the rulemaking process will likely result in a period of uncertainty and potentially result in the same process that would be covered by interpretive guidance.

3. If so, specifically what needs to be clarified and how would you do it?

With or without rulemaking, a designation for commercial energy efficiency professionals should be defined and recognized by the state in the same manner as the home energy auditor. This will provide PACE boards with greater certainty in determining whether a proposed “Energy efficiency improvement” reduces the energy consumption of the property and is therefore qualified under the definition. Absent specific guidance, some districts are using both a home energy auditor and a commercial engineer, resulting in higher costs without necessarily benefiting the program outcome.

Uncertainty ultimately increases the cost of capital and the efficiency of doing business, so to the extent that rules or interpretive guidance can eliminate or mitigate the level of uncertainty not necessarily mentioned in the statute, all parties will benefit.

RsMO 67.2815.1 requires that a clean energy development board shall not enter into an

assessment contract without making certain findings and empowers the clean energy development board with the discretion necessary to make those findings. Further, as required under RsMO 67.2815.2, an assessment contract “shall provide” details on how the project will “either reduce energy consumption or create energy from renewable resources.”

With or without rulemaking, an amplification or description of the use of reasonable and customary methodologies by the clean energy development board in its statutorily granted discretion would provide additional clarity to the nexus between the definition of Energy Efficiency Improvement or Renewable Energy Improvement and the findings required by the board in the creation of an assessment contract.

4. What problem does the clarification address in Missouri?

Please see the comments noted above.

Clean energy development boards have been granted substantial authority to create 20-year special assessments that are covenants running with the property and are required to be collected by governmental authorities. Reducing uncertainty about other eligible improvements and other matters related thereto will be important in findings by these political subdivisions

5. Are there other ways to address the problem?

Yes, we believe the Authority in consultation, as applicable, with other governmental agencies can provide interpretive guidance, no-action letters or informal FAQ type information without rulemaking. To the extent the Authority is amplifying or describing usual and customary methodologies acceptable in Missouri, that does not seem to rise to the level of a rule. We recognize that if specific definitions or absolute findings that exceed the reasonable ability to interpret the statute are made then a rule may be appropriate. Other economic development programs have operated successfully using nonbinding interpretive guidance and third-party

professionals in determining findings. Examples of methodologies and potential Authority clarifications follow:

- *If a clean energy development board adopts a policy that improvements rated by federally approved authorities as energy efficient should qualify as being “designed to reduce” energy consumption, a response from the Authority that such requirement is met seems reasonable and not something that would rise to the level of a rule.*
- *Conversely, if a clean energy development board adopts a policy that certain improvements that have a useful life of 25 years can be financed with a 25-year*

assessment, it seems reasonable that the Authority could state that this exceeds the authority granted by the statute.

Interpretive guidance from the Authority regarding methodology that is reasonable and acceptable for making findings regarding energy efficiency improvements and renewable energy improvements that are not listed in the statute would be very useful and would not necessarily rise to the level of a rule. The methodology could include requests that findings related to improvements and computation of energy savings are acceptable if they are reviewed by an energy expert and tested by a CPA firm or some other qualified authority for compliance with the statute.

6. What information (data, studies, examples, etc.) support the need for the clarification? If possible, please provide copies, citations or links to such information.

There are many national, generally accepted and commonly used industry standards that it would be reasonable for a clean energy development board to incorporate into the methodologies it uses to substantiate compliance with the statutory definition of “energy efficiency improvement” or for the purposes of substantiating other findings required under statute. For example, the SEER standard (2016 AHRI 210) is utilized by the U.S. Department of Energy, Energy Star, Original Equipment Manufacturers, U.S. Green Building Council and in state and municipal building codes. We believe the use of SEER standards in the methodologies used by clean energy development boards to substantiate statutory compliance is reasonable and believe the Authority’s guidance regarding the reasonableness of methodologies that rely on similar industry standards would be beneficial to the Missouri PACE program.

Examples of other industry standards that could be beneficial in the use of methodologies used by clean energy development boards include:

- AHRI (SEER and other rating methodologies for HVAC and refrigeration) www.ahrinet.org
- Energy Star (EPA rating for specific equipment and designs) www.energystar.gov
- LEED Certification (U.S. Green Building Council; design parameters for clean and energy efficient buildings) www.usgbc.org
- National Fenestration Ratings Council (window efficiency rating organization; establishes U-factor, Solar Heat Gain Coefficient, etc.) www.nfrc.org
- R-Values (U.S. Department of Energy supported by appropriate ASTM standards; rating to determine heat retention of insulation at varying levels of thickness) www.energystar.gov

7. What is the cost of the clarification to businesses, consumers or others?

The national standards and information are generally free or available for low cost subscriptions. Home energy auditors and commercial energy experts are not expensive if they can work under standard documentation or guidelines that are broadly applicable in the case of residential improvements.

8. What is the benefit of the clarification

The clarifications outlined above would accomplish the following:

- *reduce the cost of capital and provide greater access to important energy savings/production projects that were not specifically named in the statute;*
- *provide guidance to board members of the clean energy development boards as they are often volunteers and are relying on third parties.*

Missouri is a fiscally conservative state with a AAA rating and a reputation for good governance and capital markets acceptance. PACE assets are generally securitized and rated by the rating agencies and placed with institutional investors who expect that the applicable states have provided sufficient guidance and clarity to the political subdivisions under statute. These clarifications would be in-line with investor expectations for a state such as Missouri.

The clarification will also be helpful in making it clear that the Authority is NOT providing guidance or regulation that may be applicable under statutes governing the Missouri State Auditor, the Missouri Ethics Commission, etc.

9. Is the clarification currently addressed by federal, state or local law, regulation, guidance or ordinance? If so, please provide citations, links or copies if possible.

Not necessarily. In some cases, there are applicable laws or regulations that are instructive. Question 6 some links to some national organizations that address energy efficiency.

10. Additional comments:

The Missouri statute is unique and does provide sufficient information to implement and manage a successful clean energy program under the statute. The fact that the Missouri statute includes the concept of economic benefit allows local boards to make findings on improvements that might otherwise be difficult to qualify based solely on useful life and energy savings. However, the statute places a high burden on the clean energy development board by requiring that findings that are directly derived from the definitions of energy efficiency improvement and renewable energy improvement meet those interpretive standards and this

creates a lack of uniformity and potential rejection of projects that might otherwise be approved. In summary, guidance from the authority regarding methodologies for the applicable definitions and savings would have the additional benefit of giving direction to the stakeholders in the PACE program as they are working under the statute.

PACE Rulemaking Survey

Response #3

1. Do you believe that a State Regulation is needed to clarify the definition of energy efficiency improvement or renewable energy improvement?

Yes

2. Why or why not?

Clarifications by the Authority would expand access and use of PACE financing consistent with the intent of the statute and would allow the greatest public benefit by further specifying eligible improvements and expanding opportunities for property owners to upgrade their properties.

3. If so, specifically what needs to be clarified and how would you do it?

- a. The Authority may wish to clarify that water efficiency is included within the definition of energy efficiency improvements. Water and wastewater conveyance and water and wastewater treatment require enormous amounts of energy. Water efficiency improvements that reduce water consumption by individual properties will save energy on a community wide basis and provide a clear benefit to property owners consistent with the intent of the statute.
- b. The Authority may wish to clarify the base list of eligible improvements that can be approved by a Clean Energy Development Board for PACE offerings to establish consistency and reduce uncertainties as to whether specific improvements meet the statutory definitions of energy efficiency and renewable energy improvements.

4. What problem does the clarification address in Missouri?

- a. Water efficiency and access to clean water is a growing issue on a community basis. Increased water usage challenges the capacity of existing infrastructure and increases building operation and maintenance costs for property owners. Clarifying the definition of energy efficiency improvements to include water efficiency will provide property owners with additional options for addressing these issues. The current wording of the statute does not specifically address water efficiency improvements as among those designed to reduce the overall energy consumption by properties.

- b. By operating more efficiently, residential PACE programs can reduce administrative costs as much as possible. In addition, reducing uncertainties may lower the cost of capital for PACE programs. By establishing a base list of eligible improvements, the Authority can help in both regards by reducing any uncertainty in the findings required by the statute.

5. Are there other ways to address the problem?

Not as explicitly described herein.

6. What information (data, studies, examples, etc.) support the need for the clarification? If possible, please provide copies, citations or links to such information.

- a. The following is a link to a white paper generated that addresses the issue of water efficiency as energy efficiency.

<http://www.circleofblue.org/wp-content/uploads/2010/08/CWCBe-wstudy.pdf>

- b. PACE Nation is an industry coalition that provides a broad array of data on eligible measures and participation by states.

<http://pacenation.us/>

- c. The Department of Energy (DOE) guidelines for best practices in residential PACE help articulate the need for an expanded menu of eligible measures. This expanded menu includes water conservation and other communal measures that help with 'avoided cost' benefits.

<https://energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf>

- d. [The Climate Registry](https://www.theclimateregistry.org/thoughtleadership/water-energy-nexus-initiatives/?gclid=EAIaIQobChMIII0ZmsX91gIVyF5-Ch1DcQ2sEAAyASAAEgLSVfD_BwE) provides support metrics that build a case for water reduction measures due to the water/energy nexus.

https://www.theclimateregistry.org/thoughtleadership/water-energy-nexus-initiatives/?gclid=EAIaIQobChMIII0ZmsX91gIVyF5-Ch1DcQ2sEAAyASAAEgLSVfD_BwE

7. What is the cost of the clarification to businesses, consumers or others?

There would be no direct cost to businesses, consumers or property owners. The

goal of the requested clarifications is to reduce costs and expand the benefits to be derived from the PACE Act. By providing guidance on allowable improvements, use of PACE program financing by property owners across the state can increase and further protect and enhance property efficiencies and values.

8. What is the benefit of the clarification?

The benefit would be two-fold. First, as previously mentioned, greater clarification could reduce the costs of PACE program administration and could lead to reduced costs of capital. Second, greater accessibility to improvements through the program would bring about reduced energy and water consumption and increased resiliency, which would benefit property owners and communities. This is consistent with the fundamental intent of the statute.

9. Is the clarification currently addressed by federal, state or local law, regulation, guidance or ordinance? If so, please provide citations, links or copies if possible.

See citations included in response to Question 6.

10. Additional comments:

PACE in Missouri, particularly residential PACE, is relatively new and developing. Administrators and Clean Energy Development Boards are working to ensure that PACE provides a useful and effective tool for property owners. While it would be helpful to develop a list of improvements endorsed by the Authority, Clean Energy Development Boards, as the governing political subdivision for individual PACE programs, should have the flexibility to evaluate and approve improvement measures determined to meet the statutory definitions.

PACE Rulemaking Survey

Response #4

1. Do you believe that a State Regulation is needed to clarify the definition of energy efficiency improvement or renewable energy improvement?

- a. We do not believe that there needs to be a change in the current definitions.

2. Why or why not?

- a. The current definition of Energy Efficiency [§ 67.2800 (6)] and Renewable Energy [[§ 67.2800 (10)] improvements provides sufficient clarity and is, in fact, more explicit than other Missouri statutory definitions of energy efficiency.

RSMo 67.8200 (6) defines energy efficiency improvements under the PACE Act as:

"Energy efficiency improvement means any acquisition, installation, or modification on or of publicly or privately owned property designed to reduce the energy consumption of such property, including but not limited to:

(a) Insulation in walls, roofs, attics, floors, foundations, and heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective windows and doors, and other window and door improvements designed to reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning distribution system modifications and replacements;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building unless the increase in illumination is necessary to conform to applicable state or local building codes;

(g) Energy recovery systems; and

(h) Daylighting systems."

This definition provides clear examples for political subdivisions to follow when developing program guidelines and approving projects for both commercial and residential properties.

Compare this definition with those in other sections of Missouri law:

RSMo 8.800, Energy Efficiency Standards, State Buildings

“Energy Efficiency – the increased productivity or effectiveness of energy resources use, the reduction of energy consumption, or the use of renewable energy sources.”

RSMo 640.652, Energy Conservation Projects (Public Building Loan Assistance)

“Energy Conservation Measure – an installation or modification of an installation in a building or replacement or modification to an energy-consuming process or system which is primarily intended to maintain or reduce energy consumption and reduce energy costs, or allow the use of an alternative or renewable energy source.”

RSMO 393.1075, Energy Efficiency Investment Act

“Energy Efficiency – measures that reduce the amount of electricity required to achieve a given end use.”

The Missouri PACE Act defines renewable energy improvement as:

Any acquisition and installation of a fixture, product, system, device, or combination thereof on publicly or privately owned property that produces energy from renewable resources, including, but not limited to photovoltaic systems, solar thermal systems, wind systems, biomass systems, or geothermal systems.

This is comparable to RSMo 8.800, relating to Energy Efficiency Standards for State Buildings, which defines renewable energy sources as:

“A source of thermal, mechanical, or electrical energy produced from solar, wind, low-head hydropower, biomass, hydrogen or geothermal sources, but not from the incineration of hazardous waste, municipal solid waste or sludge from sewage treatment facilities.”

Policy makers were intentional in their drafting and adoption of the definitions of energy efficiency and renewable energy. The PACE Act definition is much more specific than others that guide energy efficiency efforts in public buildings using public funds. The existing definitions have led to the establishment of multiple statewide PACE districts, and tens of millions of dollars in private capital investment in the state. The PACE program is a very successful example of the best of public-private partnerships.

Under the current definitions, clean energy development boards in coordination with their private partners, where applicable, have developed product lists that cover over 50 different EE/RE product types including but not limited to doors, windows, HVAC systems, solar, weatherization items and many more. Within those product types, PACE providers and the contractors they work with – have over one million different listed products that meet local, state, federal or third-party standards for energy efficiency or renewable energy. In addition, PACE providers have the ability under the

existing statute to provide access to new products that come to the market to ensure property owners have access to the newest technology available.

3. If so, specifically what needs to be clarified and how would you do it?

a. Not applicable

4. What problem does the clarification address in Missouri?

a. Not applicable

5. Are there other ways to address the problem?

a. We are not aware that a problem exists. We have had no issues related to the definitions of energy efficiency or renewable energy in the existing statute. There are existing ways to handle making changes that impact the types of products that are available to the market.

First - consumers, contractors or local constituent communities of the respective clean energy development boards - can seek clarification at the district level by amending the district resolutions that clarify what the basis for eligible products are in accordance with the state statute. If a change in the types of improvements be desired (i.e. adding water conservation to the list of approved measures), the state legislature may amend §67.2800 as necessary to ensure that the types of improvements added can meet the public purpose requirements of PACE financing.

6. What information (data, studies, examples, etc.) support the need for the clarification? If possible, please provide copies, citations or links to such information.

a. Not applicable.

7. What is the cost of the clarification to businesses, consumers or others?

a. Not applicable.

8. What is the benefit of the clarification?

a. Not applicable.

9. Is the clarification currently addressed by federal, state or local law, regulation, guidance or ordinance? If so, please provide citations, links or copies if possible.

a. Not applicable.

10. Additional comments:

- a. We believe the existing definitions related to energy efficiency and renewable energy have provided the basis for what is becoming a very successful PACE program in Missouri. We look forward to working with all stakeholders to address any marketplace questions that exist surrounding the PACE program.

PACE Rulemaking Survey

Response #5

- 1. Do you believe that a State Regulation is needed to clarify the definition of energy efficiency improvement or renewable energy improvement? Yes.**
- 2. Why or why not? Currently, PACE liens and processes are largely self-regulated. The enabling legislation gives the Missouri Clean Energy District and the various PACE boards broad authority and does not clearly define oversight mechanisms. The process of acquiring a PACE lien is largely personal, between the contractor and the homeowner. Once the lien is in place, virtually any opportunity for any party other than the homeowner to question the procedure by which the lien was created, the terms or conditions of the lien, or to evaluate the nature and quality of the improvements is completely foreclosed, and the lien is virtually absolute. It is highly unusual for a financial obligation to find its way to a tax bill with no review from any elected official or office, appointed authority, or outside agency. Therefore, I highly support strong definitions of the types of improvements that fit the statutory requirements, and clear, enforceable rules that can be easily found by interested parties at all levels. I support a specific list of improvements rather than broad categories.**
- 3. If so, specifically what needs to be clarified and how would you do it?**
- 4. What problem does the clarification address in Missouri? The only public policy basis for having this type of financing collected on a tax bill is the fact that the debt is incurred in the furtherance of “clean energy” initiatives. Strong definitions are needed to ensure this public policy is directly supported, and that Collectors do not inadvertently begin a slide into using the tax bill for general debt collection.**
- 5. Are there other ways to address the problem? I don’t know, but self regulation by PACE itself is not an acceptable solution. Profit motive will always erode even the best of intentions. People don’t do what you expect—they do what you inspect.**

- 6. What information (data, studies, examples, etc.) support the need for the clarification? If possible, please provide copies, citations or links to such information. The residential program is too new for data to be available. A proactive plan is always better than remediation.**

- 7. What is the cost of the clarification to businesses, consumers or others? None. It can only protect consumers.**

- 8. What is the benefit of the clarification? Consumer protection, and tying the use of PACE directly to the public policy it purports to accomplish.**

- 9. Is the clarification currently addressed by federal, state or local law, regulation, guidance or ordinance? If so, please provide citations, links or copies if possible.**

- 10. Additional comments:**