

STATE OF MICHIGAN

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PROPERTY ASSESSED CLEAN
ENERGY ACT:

Nature and treatment of contractual
assessments imposed under the
Property Assessed Clean Energy Act.

SPECIAL ASSESSMENTS:

The contractual assessments imposed by local governments under the Property Assessed Clean Energy Act, MCL 460.931, *et seq.*, are considered special assessments by the local government and treated in a similar manner as the real estate taxes on the property.

Opinion No. 7324

Date: October 30, 2023

The Honorable Betsy Coffia
State Representative
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

You have asked whether the contractual assessments imposed by local governments under the Property Assessed Clean Energy Act (PACE), MCL 460.931, *et seq.*, “are considered special assessments by the local government and treated in a similar manner as the real estate taxes on the property.”¹

¹ Recent amendments to PACE take effect on the 91st day after the final adjournment of the 2023 Regular Session. 2023 PA 106. None of those amendments, however, affect the substantive analysis in this opinion.

As background in your letter, you explain that the PACE program enables property owners, including commercial property owners, to finance energy or water efficiency improvements on their properties or to install renewable energy systems, with the financing being secured by a voluntary, contractual, assessment on the property by the local unit of government. You go on to explain that this financing is frequently sought by developers of low-income housing who are also accessing financing from the United States Department of Housing and Urban Development (HUD), but that HUD currently will not consent to PACE financing for such housing projects in Michigan. You indicate, however, that this situation could change because HUD has released guidance on the criteria used to determine whether a state's PACE program meets its standards, and one of those criteria is an opinion from the Attorney General answering the question you posed.

There are essentially two parts to your question. The first part pertains to whether the contractual assessments imposed by a local unit of government under PACE are considered "special assessments." In answer to that part of your question, under Michigan law, a "special assessment" refers to a "levy upon property within a specified district" that is "designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area," "as permitted by statute, municipal charter, and applicable ordinances." *Petersen Fin, LLC v City of Kentwood*, 337 Mich App 460, 472 (2021), lv den 511 Mich 914 (2023). In addition, special assessments "may be collected at the same time and in the same manner as other property taxes." *Id.* at 472–473.

Michigan’s PACE program provides statutory authority for a local unit of government to “create a district or districts under the program.” MCL 460.935(1). The local unit of government enters into a contract with an owner of property within such a district to finance improvement projects on that property, with repayments on the financing being made through assessments on the benefited property. MCL 460.935(2). The assessments on the benefited property “shall be included in each summer and winter tax bill issued under the general property tax act . . . and shall be collected at the same time and in the same manner as taxes collected under the general property tax act.” MCL 460.943(2). Because the contractual assessments imposed by a local unit of government are a levy upon property within a specified district to recover costs for improvements benefitting the property, as permitted by the PACE statute, the contractual assessments are indeed “special assessments” under Michigan law. See *Petersen Fin, LLC*, 337 Mich App at 473.

The second part of your question pertains to whether the assessments levied under a PACE program are treated similarly to real estate taxes on the property. As mentioned, the assessments are included on the property tax bill for the benefited property and collected in the same manner as property taxes. MCL 460.943(2). In addition, the assessments “constitute a lien against the property” that “runs with the property and has the same priority and status as other property tax and assessment liens.” MCL 460.943(1). In particular, “[t]he local unit of government has all rights in the case of delinquency in the payment of an

assessment as it does with respect to delinquent property taxes.” *Id.* Because of the manner in which the assessments are collected, the nature of the assessments as a lien on the property, the priority the lien has in regard to the property, and the rights of the local unit of government in the case of a delinquency, the assessments levied under PACE are treated similarly to real estate taxes on the property.

It is my opinion, therefore, that contractual assessments imposed by local governments under the Property Assessed Clean Energy Act, MCL 460.931, *et seq.*, are considered special assessments by the local government and treated in a similar manner as the real estate taxes on the property.



Dana Nessel
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