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MICHIGAN HOUSE OF REPRESENTATIVES

BETSY COFFIA
STATE REPRESENTATIVE

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Michigan Attorney General Dana Nessel
G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909

Attorney General Nessel,

I am writing to request an official opinion from your office on whether the contractual assessments imposed by local governments under the Property Assessed Clean Energy (PACE) Act are considered “special assessments by the local government and treated in a similar manner as the real estate taxes on the property.”

This inquiry was brought to my office by Lean & Green Michigan, which administers PACE on behalf of 54 local governments in Michigan. As you know, PACE enables commercial property owners to finance to improve energy efficiency, water efficiency of their property or to install renewable energy systems, and to secure the financing with a voluntary tax assessment. This has been expanded by recent legislative success to include environmental hazard projects, and to allow property owners greater flexibility. According to Lean & Green Michigan, one of the most frequent requests they receive is from developers of workforce and low-income housing. They report that they have not been able to assist those who are also accessing U.S. Department of Housing and Urban Development (HUD) financing, as they will not currently consent to PACE participation on their projects in Michigan.

HUD has released guidance on their review process for determining if the PACE program in a state or locality would meet their standards for compatibility. Their approval process requires 14 qualifications, including an opinion from the state's attorney general. More narrowly, the opinion is limited to whether the contractual assessments imposed by local governments under the PACE Act (MI Public Act 270 of 2010) are “special assessments by the local government and treated in a similar manner as the real estate taxes on the property.”

In short, HUD will not consent to PACE financing for those housing projects being primarily financed through HUD programs like the Low Income Housing Tax Credit Program. HUD will, however, recognize PACE if 14 criteria are met, one of which is an Attorney General opinion stating that PACE is a valid statewide program. Please let my office know if you will be able to provide an opinion and if you have any questions. Thank you for your consideration.

Sincerely,

Betsy Coffia
State Representative
House District 103