

## **ROLE OF THE ADMINISTRATOR OF A PACE IN A BOX PROGRAM ADDITIONAL GUIDANCE (July 20, 2018)**



The working groups that formulated PACE in a Box<sup>1</sup> have issued this Additional Guidance to clarify their recommendations regarding the role of the administrator of a PACE in a Box (“PIAB”) program. The PACE Act<sup>2</sup> authorizes local governments that establish PACE programs to delegate the administrative responsibilities for the programs to independent third parties. For the reasons set forth below, the working groups have determined that any local government choosing to have third-party administration of its PACE program should select a single, fully independent and transparent entity to perform this important function.

### Background

The PIAB working groups were organized to develop a turn-key model program that would enable local governments in Texas to establish user-friendly, cost-effective and sustainable PACE programs based on uniform state-wide standards, guidelines and documentation. PIAB was specifically designed to foster the creation and maintenance of a competitive marketplace freely open to all stakeholders desiring to participate in any aspect of PACE financing transactions. After closely examining the structure and operation of PACE programs established in other states, the working groups found that jurisdictions utilizing a multiplicity of administrators were significantly less effective and more costly to operate compared to jurisdictions utilizing a single administrator. For example, in jurisdictions with multiple administrators, the working groups found widespread inconsistencies in documentation and technical standards among the administrators, unduly high transaction costs, insufficient consumer protections, and worrisome opportunities for serious conflicts of interest among transaction participants. Therefore, the PIAB model contemplated the use of a single third-party administrator acting solely on behalf of the local government in operating its PACE program.

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<sup>1</sup> The working groups consisted of volunteer experts representing the variety of stakeholder interests that would be involved in Texas PACE programs. Separate working groups studied the requirements and best practices for program design, project underwriting, uniform technical standards, financial platforms, education, training, and marketing. The combined recommendations of the working groups are set forth in the PACE in a Box Program Guidelines. <https://www.keepingpaceintexas.org/library/document-library>. Section I of the PACE in a Box model lists the Working Group Chairs and volunteers.

<sup>2</sup> <https://statutes.capitol.texas.gov/Docs/LG/htm/LG.399.htm>

## Additional Guidance

The working groups determined that the single administrator model is critical for the success and integrity of each PIAB program established in Texas. As the authorized representative of the local government in connection with its PACE program, the administrator (including the administrator's officers, directors, partners, employees, affiliates and other similarly related parties) must be an impartial intermediary and must not have any direct or indirect interest in or potential benefit to be derived from the outcome of any pending or consummated PACE transaction within the jurisdiction of the local government. Furthermore, the local government should ensure that the administrator will be completely independent and positioned to exercise unfettered judgment when required for the performance of its duties as the local government's authorized representative.<sup>3</sup>

The original PIAB model program did not expressly set forth ethical and transparency standards for the single program administrator. Therefore, this additional guidance is published to clarify the role of the third-party administrator, and the model report is amended to include the following requirements for the administrator (authorized representative) of any PIAB program:

- 1 Financial transparency and the prohibition of self-dealing. The authorized representative (including its officers, directors, partners, employees, affiliates and other similarly related parties) shall not:
  - Review, approve or participate in funding any project in which it has or may have a direct or indirect interest or may derive a potential financial benefit
  - Receive or accept any financial benefit from any affiliate or other organization involved in any PACE project within the jurisdiction of the local government (other than event sponsorships)
- 2 Revenue Disclosure. The authorized representative must publicly disclose the sources of all revenue derived by it on an annual basis
- 3 Fee Approval and Disclosure. All fees charged or received by the authorized representative must be pre-approved by the local government consistent with the PACE Act<sup>4</sup>, publicly disclosed, and reviewed annually by the local government
- 4 Marketplace Distortion. The authorized representative (including its officers, directors, partners, employees, affiliates and other similarly related parties) shall not:

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<sup>3</sup> <https://www.keepingpaceintexas.org/library/document-library>. See: Section III, Introduction to PACE in Texas

<sup>4</sup> TX Local Gov't Code §399.008(e)

- Provide or offer to provide any commercial services of any nature for or in connection with PACE projects located within the jurisdiction of the local government
- Require property owners to obtain services from specific, favored vendors (but the authorized representative may set objective minimum standards for quality assurance that apply to all parties)

5 Compliance with local government employee conflicts of interest disclosure policies.

The authorized representative:

- Must at all times comply with all of the local government's employee conflicts of interest and disclosure policies
- Must at all times comply with all of the conflicts of interest and disclosure requirements applicable to local government employees under [Texas Association of Counties' 2017 Short Answers to Common Questions prepared by Association Legal Department<sup>5</sup> or Texas Municipal League's Conflict of Interest/Disclosure Laws Applicable to City Officials, Employees, and Vendors<sup>6</sup>].

6 Stakeholder Inclusion. The authorized representative must provide education, outreach and training to all potential stakeholders including underserved communities and small businesses.

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<sup>5</sup> <https://www.county.org/member-services/legal-resources/publications/Documents/Disclosure%20of%20Certain%20Business%20Relationships.pdf>

<sup>6</sup> <https://www.tml.org/p/Conflicts%20and%20Disclosure%20Laws.pdf>