

Georgia's C-PACE Program: A Green Assessment Financing Tool for Municipalities, Counties, and Economic Development Projects

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In this article, the authors discuss a Georgia law that is designed to incentivize positive, environmentally-sound commercial growth throughout the state by authorizing green financing programs.

State and local governments around the country are adopting climate legislation in response to growing evidence of the economic and human costs of climate change on urban populations. Widely accepted scientific evidence ties steady increases in average global temperatures and more frequent and severe peak energy consumption patterns to increased energy supply costs and increased healthcare costs from heat-related ailments. Densely populated areas are impacted especially hard and nationally, many state and local governments have begun adopting inventive, practical legislation aimed at mitigating these negative effects.

In an effort to augment the tools at the disposal of local government, the 2024 Georgia General Assembly adopted its Commercial Property Assessed Conservation, Energy, and Resiliency Cooperation Law (C-PACE Law or C-PACER Law). The C-PACE Law is designed

to incentivize positive, environmentally-sound commercial growth throughout the state by authorizing green financing programs. Through these C-PACE programs, Georgians stand to greatly benefit from newly available long-term green investing, and municipalities and counties adopting C-PACE programs can anticipate commercial growth and a reduction in negative environmental impacts.

HOW C-PACE WORKS

The C-PACE Law empowers Georgia's municipalities and counties (Participating Local Governments) to impose voluntary non-ad valorem special assessments on private property (C-PACE Assessments), and to enter into intergovernmental assessment agreements (Intergovernmental Agreements) with development authorities (Authorities) providing a pathway for Authorities to help private businesses fund capital improvements to their real

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property that increase energy efficiency, resilience and water conservation (Qualifying Improvements).

By entering into contracts with an Authority (each, an Assessment Agreement), a property owner agrees to repay the financing and administrative costs related to their Qualifying Improvements through C-PACE Assessments which are added to their property tax bill. As provided by the C-PACE Law, the Authority may issue a “C-PACE Obligation” (e.g., a bond or promissory note) to evidence the property owner’s repayment obligation pursuant to their Assessment Agreement. C-PACE Obligations are sold to investors or assigned to C-PACE lenders or specialized capital providers.

To secure the repayment of the C-PACE Obligation, the Authority assigns its interest in the Assessment Agreement to a capital provider and enters into an Intergovernmental Agreement with the Participating Local Government to impose and assign the C-PACE Assessments to the Authority for subsequent payment to the capital provider. A market of specialized lenders and capital providers has emerged to finance Qualifying Improvements.

Pursuant to the related Intergovernmental Agreement, these C-PACE Obligations bind the Participating Local Government and the Authority to remit the property owner’s payments to the capital provider, and this structure enables the Participating Local Government to structure the debt so as to tie its payment to the property owner’s yearly property tax payments. The Participating Local Government authorizing the C-PACE Program and the Authority responsible for payment of the debt are never responsible for the C-PACE Obligation if a property owner fails to make

payments to the capital provider (i.e., no pledge of local government general funds).

To implement a C-PACE Program, a Participating Local Government must:

- (1) Adopt legislation authorizing its C-PACE Program;
- (2) Solicit applications from private businesses seeking funding from the C-PACE Program;
- (3) Identify which applicants qualify to receive funding under the C-PACE Program;
- (4) Cause the Authority to secure the consent of any lender that has a security interest in the property;
- (5) Enter into an Intergovernmental Agreement with an Authority to provide financing to qualifying applicants;
- (6) Cause such Authority to enter into an Assessment Agreement with the qualifying applicant to finance or refinance the costs of the Qualifying Improvements; and
- (7) File a notice of assessment on the property in the real estate records.

Financing provided pursuant to a C-PACE Program is a highly secure investment for credit providers because C-PACE Assessments are treated like general taxes, have the same lien priority as taxes, and thereby constitute a senior lien on the entirety of the related improved property. This lien automatically transfers to any new owner upon the sale of the improved property and, like taxes, cannot be terminated by foreclosure. This security allows property owners to take advantage of low-interest capital raised from the private sector, which is repaid over the useful life of the

Qualifying Improvements. Property owners also benefit from the fact that C-PACE financing does not increase debt on their balance sheets.

BENEFITS OF C-PACE FINANCING

C-PACE Programs are beneficial to both property owners and Participating Local Governments. For property owners, C-PACE constitutes a comparatively lower-cost portion of their capital stack as immediately deployable capital on fixed-rate loan terms up to 30 years, all with the flexibility to make one payment per year through their property tax bills. As a result of the assessment structure, the financing is often off-balance sheet for the property owner.

Participating Local Governments are able to deploy C-PACE Programs as a tool to incentivize the restoration of blighted or underused properties, achieve energy goals and benchmarks, promote smart growth, encourage adaptive reuse of older commercial building inventory, and create affordable housing, which results in additional jobs for contractors in their community. Furthermore, funding for C-PACE Programs never comes from taxpayers or the Participating Government's general fund, because property owners must supply their own private financing in order to participate.

WHAT IS A QUALIFYING IMPROVEMENT?

Generally, capital improvements to commercially-owned properties qualify for participation in a C-PACE Program if they either save or produce energy or water. A Qualifying Improvement is an improvement that is permanently affixed to the property that:

- (1) Is energy efficient;
- (2) Increases the property's use of renewable energy;
- (3) Promotes water conservation; or
- (4) Increases the resiliency of the property.

Examples include improvements to HVAC systems, upgrading to energy efficient lights and controls, installing energy efficient or more resilient windows, seismic retrofits, installing fire suppression systems, creating energy storage facilities to reduce reliance on traditional energy infrastructure, and installing or upgrading boilers and heaters to more sustainable models.

WHICH PROPERTY OWNERS QUALIFY?

While residential dwellings containing less than five units do not qualify for participation in a C-PACE Program, capital improvements to multi-family housing that save or produce energy or water typically do qualify for participation in a C-PACE Program. To be eligible for participation in a particular C-PACE Program, the property to be improved must be within the corporate limits of the Participating Local Government administering that C-PACE Program. Qualifying property includes "privately-owned" or "leased" commercial, industrial or agricultural property; as a result, the C-PACE Incentive can be stacked with the Bonds-for-Title/Lease Purchase ad valorem tax incentive.

WHAT COSTS MAY PROPERTY OWNERS FINANCE?

Property owners may finance all costs of

acquisition, construction, assembly, installation, modification, renovation or rehabilitation incurred in connection with a Qualifying Improvement. Additionally, property owners may finance all fees and costs associated with obtaining necessary permits and approvals; financing charges and loan fees (including interest); engineering, architectural and legal services; inspections and third-party verifications; fiscal agents and fees charged by the Authority; creating plans and specification for the Qualifying Improvement; loan repayment in conjunction with a refinancing; and the Authority's administrative expenses.

Property owners may use funding from

C-PACE Programs to finance Qualifying Improvements for existing buildings or new construction, and may also refinance previously incurred costs that meet the definition of a Qualifying Improvement under the C-PACE Law. The C-PACE law limits the amount of C-PACE Obligations authorized for an individual property such that (i) without lender consent, all secured debt (including the C-PACE Obligation) may not exceed 80% of the fair market value of the property (FMV), and (ii) the C-PACE Obligation alone may not exceed 25% of FMV (including any increased value as a result of the Qualifying Improvements).