



# C-PACE to Help Developments Make a Change for the Better. . .

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## The Origins of PACE

The project development industry continues to grow across America each year as more and more emphasis is placed on energy-efficient infrastructure and sustainability projects. In an effort to encourage the continued investment in energy efficiency and clean energy projects, state legislatures have enacted what is commonly known as property assessed clean energy (PACE) financing, also known as C-PACE for use in commercial and industrial projects. C-PACE legislation leverages special assessments, opening the door to a number of different avenues for acquiring capital for projects.

Currently, 38 states plus the District of Columbia have C-PACE-enabling legislation, while 30 of these states plus D.C. have active C-PACE programs with projects. Although C-PACE is a creature of state law, the federal government has played a role in raising awareness of the funding opportunities of the program. In 2009, the White House released a policy framework for PACE. The U.S. Department of Energy also announced support for energy efficient projects through grant funding. To view a breakdown of states that offer PACE financing, [consult this map](#) created by PACENation.

## The Operation of C-PACE

While certain details of the C-PACE statutes vary from state to state, the general operation of C-PACE programs remains relatively standard. PACE involves the cooperation between public and private parties, as well as independent lenders, aka capital providers. Initially, the process begins with a private property owner seeking funding for an energy-efficient project (or alternative energy, water or storm-hardening project), as defined under the applicable C-PACE statute. Some common examples of eligible alternative energy projects include: solar improvements, geothermal

improvements, certain qualifying wind projects, solar thermal projects, and certain technologies which lessen energy consumption. Energy-efficient projects normally include HVAC, windows, roofs, doors and any components that save energy. C-PACE generally does not place restrictions on the type of lender qualifying under the program; private or public lending – even municipal bond financing – generally qualifies.

The real novelty of C-PACE financing stems from the way in which the loan is secured. Using C-PACE, a property owner may petition the local governmental unit to levy a special assessment against the property owner's property and assign those assessments as security for the loan to the lender providing financing for the qualifying energy project. The property usually must be located within a special improvement district established under each state's enabling legislation. In Ohio, for instance, these special improvement districts are known as "energy special improvement districts" or ESIDs. In Kentucky, the statute describes similar "energy project assessment districts" or EPADs. The governmental unit or its administrator then works in conjunction with the landowner to develop a plan for the project and use local legislation to levy the special assessment. The local government unit is essential to this process.

These special assessments are based upon the estimated costs of the completion of the C-PACE project and are added to the owner's standard property tax bill. Assessment payments may be collected in the normal method by the tax collector or by a collection agent for the lender. The C-PACE lender then receives the share of the property tax bill attributable to the special assessment assigned to it. If the property owner fails to pay the special assessment, the lien that was placed upon the property can be enforced, usually through foreclosure. For most states, unpaid property tax liens have the highest priority of all liens regardless of the point in time which they were levied. The lien encumbers the property and, as such, will follow the applicable real estate upon conveyance.

#### **C-PACE Advantages and Disadvantages**

**Advantages**

Secure financing over a longer term

Repayment over many years (up to 30)

Lower interest rates due to security of loan by property tax lien

Encourages energy efficient projects and alternatives; the energy savings from these projects typically exceed the special assessment cost

**Disadvantages**

Must own property

Staffing the PACE districts or administrator can be a question

Tax liens subordinate other lienholders which may cause them to resist PACE

Takes time to adequately make a special assessment on the property

**A Deeper Dive into Special Improvement Districts (If Required by State Law)**

Generally, special improvement districts will have their own governing body, oftentimes a non-profit board set up for the sole purpose of managing said district. The bounds of the district may be limited to those parcels housing PACE projects or include the entire governmental unit. Once a landowner decides to pursue a PACE project, they have the option to petition the local governmental unit and the district. The boards of both then meet to approve the project. For some states, the parcels located within a district do not have to be contiguous, and it is key to note that the participation in a district is completely voluntary.

**Concerns Surrounding PACE Financing****a. Mortgage Lender Concerns**

As noted previously, the special assessment is in addition to other property taxes and assessments, and it is a lien of highest priority on the property regardless of whether other parties had prior mortgage liens. This goes against the traditional understanding of lien priority as “first in time, first in right,” which has led in some cases to resistance from mortgage lenders who see PACE programs as usurping their own lien. To compensate for this, PACE liens almost always preclude acceleration of the PACE debt upon failure

to pay the special assessment. This results in less risk to the mortgage lender that the property owner will fail to pay back the mortgage due to acceleration of a PACE debt with higher priority. Also, consent from every mortgagee of record is required prior to levying a C-PACE assessment (usually by law, but always by reputable PACE lenders).

#### **b. Note on Residential PACE**

Although commercial C-PACE programs are more heavily utilized in most states, residential programs are becoming more common with the adoption of more stringent consumer protection laws. For example, under recent amendments to Ohio R-PACE statutes, residential PACE liens will no longer be treated as a prior lien to most mortgages of record. Concern stems from the fact that contractors may target people with few credit options who need urgent energy-efficient repairs to their properties. With limited options, these homeowners may pay higher interest rates, with some loan terms exceeding 20 years. This could disproportionately burden low-income households, placing further strain on their ability to pay debts. Additionally, government administrators may defer to unsophisticated participants in the process to determine whether consumers are protected; with less government oversight, there is a greater possibility that the programs are being designed and run unfairly and against the government's intentions.

#### **Conclusion**

PACE and C-PACE financing is a unique method of financing energy-efficient, clean energy and other qualifying projects, with states and the PACE stakeholders continuing to adjust and develop their applicable PACE law. Our hope is that more and more C-PACE projects develop, creating positive change throughout the country in the form of economic development, energy efficiency and renewability savings.

For more information, contact the authors of this article or any member of Frost Brown Todd's [Public Finance](#) team.

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