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COMMERCIAL PACE ENERGY PROGRAMS

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You asked for a status report on commercial property assessed clean energy (PACE) programs.

SUMMARY

[PA 11-80](#) allowed municipalities to establish PACE programs, under which they could lend money to local residents and businesses for energy efficiency or renewable energy projects for their properties. The loans are recovered by an assessment on the property that benefits from the program, backed by a lien. The assessment is treated like the property tax on the property, except that the lien does not have priority over existing mortgages.

As described in OLR Report [2012-R-0027](#), the federal government took steps in the past few years that largely curtailed implementation of PACE programs in the residential sector. Subsequently, the legislature adopted [PA 12-2](#), June 12, 2012 Special Session. This act limits the earlier authorization for PACE programs to properties containing four or fewer residential units. It requires the Clean Energy Finance and Investment Authority (CEFIA) to establish a separate PACE program for qualifying commercial property (including multifamily buildings with five or more units) and allows municipalities to participate in the program under a written agreement approved by their legislative bodies. The act assigns various responsibilities to CEFIA in establishing the new program, called C-PACE.

To finance improvements, the act allows CEFIA to (1) make appropriations and (2) issue bonds or other obligations that may be secured by pledged revenue derived from the commercial program, including revenues from assessments on the commercial property. It also allows CEFIA to serve as an aggregating entity to secure state or private third-party financing for the energy improvements.

CEFIA is developing the program and recently issued a request for qualifications for a contractor to help it administer the program. Bridgeport and Norwalk have announced plans to develop C-PACE programs with CEFIA's cooperation.

LEGISLATION

PA 11-80

PA 11-80 allowed any municipality to establish a loan program for financing sustainable energy improvements to qualifying real property located within the municipality, if it determines that this is in the public interest. Qualifying real property are single- or multi-family residential dwellings or other buildings that a municipality determines can benefit from energy improvements. The property owner must agree to participate in the program, which includes signing a contractual assessment.

Any municipality that establishes a loan program may issue bonds, as needed, to offer loans to the owners of eligible property in the municipality to finance energy improvements. The bonds must be backed by special contractual assessments on the benefitted property.

If a qualified property owner requests a loan, the municipality must:

1. require an energy audit or renewable energy system feasibility analysis on the property before approving a loan;
2. enter into a loan agreement with the owner in a principal amount sufficient to pay the costs of energy improvements and any associated costs the municipality determines will benefit the qualifying property;
3. impose requirements to ensure that the loan is consistent with the program's purpose; and
4. impose requirements and conditions on the loan to ensure timely repayment, including placing a lien of the benefitted property.

Any loan made under the program must be repaid over a term that does not exceed the calculated payback period for the installed improvements (the time in which the energy cost savings equal the cost of the improvements), as determined by the municipality. The municipality must set a fixed interest rate when each loan is made. The interest rate, as supplemented with any available state or federal funding, must be sufficient to pay the program's financing costs, including loan delinquencies. The loan cannot have a prepayment penalty.

Loans under the program, interest, and any penalties are a lien against the property. The lien must be levied and collected in the same way as property taxes, including, in a default or delinquency, with respect to any penalties and remedies and lien priorities. However, the lien does not have priority over existing mortgages.

PA 12-2, June 12, 2012 Special Session

As described in OLR report 2012-R-0027, the federal government has taken steps that largely curtailed implementation of PACE programs in the residential sector. Subsequently, Connecticut and other states have adopted legislation authorizing PACE for non-residential customers. In Connecticut, the legislature adopted legislation in 2012 that requires CEFIA to establish a separate PACE program for qualifying commercial property (including multifamily buildings with five or more units) and allows municipalities to participate in the program under a written agreement approved by their legislative bodies.

It requires CEFIA to:

1. develop guidelines governing the terms and conditions under which state financing may be made available to the commercial program, including consulting with representatives from the banking industry, municipalities, and property owners to develop the parameters for consent by existing mortgage holders;
2. establish the position of commercial sustainable energy program liaison within CEFIA;
3. establish a loan loss reserve or other credit enhancement program for qualifying commercial real property; and
4. adopt standards to ensure that the energy cost savings of the improvements over their useful life exceed their costs.

The act allows CEFIA to make appropriations for and issue bonds, notes, or other obligations to finance the improvements. The bonds or other obligations must be issued in accordance with the law governing CEFIA bonds. They may be secured by pledged revenue derived from the commercial program, including revenues from benefit assessments on qualifying commercial real property. It also allows CEFIA to serve as an aggregating entity to secure state or private third-party financing for the energy improvements.

The act's provisions regarding the program are generally similar to the law regarding municipal PACE programs, with CEFIA taking the place of the municipality. But the act:

1. requires the mandated energy audit or renewable energy feasibility analysis to assess the energy cost savings of the proposed project over its useful life;
2. gives the lien priority over existing mortgages, but requires that the property owner give existing mortgage holders at least 30 days' written notice of his or her intent to participate in the program before the lien is recorded;
3. authorizes variable interest loans; and
4. allows participating municipalities to assign the liens to CEFIA and allows CEFIA to sell or assign the liens.

Under the act, the notice that must be given to prospective participants in the commercial program is somewhat different than that required under the law for municipal PACE programs. Under that law, the municipality must give prospective participants a notice that encourages them to seek legal advice to understand the potential consequences of participating in the program. Under the act, CEFIA must disclose to the property owner the:

1. costs and risks associated with participating in the program, including risks related to the property owner's failure to pay the benefit assessment and
2. effective interest rate of the benefit assessment, including fees CEFIA charges to administer the program, and the risks associated with variable interest rate financing.

The act also requires CEFIA to notify the owner that he or she may rescind any financing agreement under the program within three business days after entering the agreement.

CEFIA

CEFIA anticipates that in administering the C-PACE program it will:

1. publish the program guidelines, including technical and financial standards that will govern the program;
2. work with municipalities to secure legal agreements about the tax collection process;
3. conduct outreach to key stakeholders to market the C-PACE program, including financiers, contractors, building owners, and municipal leaders; and
4. provide credit enhancement or investment in C-PACE financings.

To meet the anticipated demand for C-PACE financing, CEFIA is seeking program administration assistance for aspects of the day-to-day program management. While CEFIA, by statute, will serve as the overall program administrator, it is considering using one or more third party administrators to:

1. help develop a user-friendly financing application process;
2. develop, receive, and review initial application from interested property owners and contractors;
3. based on program guidelines, approve or decline C-PACE applications;
4. monitor and verify project process or completion; and
5. work with CEFIA's evaluation, measurement, and verification manager in maintaining a database of applicants and projects.

On September 24, 2012, CEFIA issued a request for qualifications from potential contractors, which is available on its website:

<http://www.ctcleanenergy.com/>.

LOCAL PROGRAMS

On September 17, 2012, the Bridgeport city council approved an agreement with CEFIA to create the first C-PACE program in the state. the program will complement the city's existing BGreen2020 initiative, which provides incentives for the private sector to develop more energy efficient facilities to help reduce their operating costs. The initiative is the result of a partnership between the city and the Bridgeport Regional Business Council, a consortium of local business groups. The initiative is also seeking to modernize the city's infrastructure and create an Energy Improvement District to support energy efficiency and production. A Green Collar Institute will train workers and act as an incubator for developing green industries.

Norwalk is also considering establishing a C-PACE program that would provide loans with terms of up to 20 years for energy efficiency improvements.

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