

House Bill 1413

By: Representatives Rhodes of the 120<sup>th</sup> and Sainz of the 180<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,  
2 so as to authorize local governments to establish and adopt commercial property assessed  
3 clean energy and storm resiliency (C-PACER) programs; to provide for a short title; to  
4 provide for legislative intent; to provide for definitions; to authorize local governments to  
5 impose voluntary special assessments for financing of qualified projects; to provide for  
6 procedures, requirements, and limitations for such programs; to require assessment contracts  
7 with property owners for financing of such projects; to provide for delegation of certain  
8 responsibilities related to administration of such programs and require a contract for such  
9 delegation; to authorize the imposition of fees to fund such programs; to provide for an  
10 application and review process; to provide for duties of local governments; to provide for  
11 billing, collection, and enforcement of such special assessments; to provide for C-PACER  
12 liens; to provide for joint programs; to provide for related matters; to repeal conflicting laws;  
13 and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
17 by adding a new chapter to read as follows:

18 "CHAPTER 93

19 36-93-1.

20 (a) This chapter shall be known and may be cited as the 'Commercial Property Assessed  
21 Clean Energy and Resilience Act'.

22 (b) It is the intent of the General Assembly to authorize the establishment of a commercial  
23 property assessed clean energy and storm resiliency (C-PACER) program that jurisdictions  
24 may voluntarily implement to ensure that free and willing owners of agricultural,  
25 commercial, industrial, and multifamily residential properties can obtain low cost,  
26 long-term financing for qualifying improvements. By authorizing local governments to  
27 adopt C-PACER programs, the General Assembly finds that a valid public purpose exists  
28 because the use of C-PACER will increase economic development, lower insurance costs,  
29 and lower disaster and emergency response and aid costs to local governments. C-PACER  
30 programs will also decrease energy and water costs and encourage energy and water  
31 sustainability.

32 36-93-2.

33 As used in this chapter, the term:

34 (1) 'Capital provider' means a private third-party entity, including its designee, successor,  
35 and assigns, that makes or funds C-PACER financing, including refinancing, under this  
36 chapter.

37 (2) 'Commercial property' means:

38 (A) Privately owned commercial, industrial, or agricultural real property;

- 39 (B) Privately owned residential real property consisting of five or more dwelling units,  
40 including property owned by nonprofit, charitable, or religious organizations; and  
41 (C) Property owned by the state or a local government entity but leased to a privately  
42 owned entity.
- 43 (3) 'C-PACER program' or 'program' means a commercial property assessed clean energy  
44 program established under this chapter.
- 45 (4) 'Financing' means financing and refinancing for qualified projects under this chapter.
- 46 (5) 'Financing agreement' means the contract under which a property owner agrees to  
47 repay a capital provider for the C-PACER financing, including, but not limited to, details  
48 of finance charges, fees, debt servicing, accrual of interest and penalties, and terms  
49 relating to treatment of prepayment and partial payment, billing, collection, and  
50 enforcement of the C-PACER financing.
- 51 (6) 'Local government' means a county, municipality, consolidated city-county  
52 government, or other political subdivision of this state.
- 53 (7) 'Program administrator' means the entity designated by a local government to  
54 administer a C-PACER program, including:
- 55 (A) A department or individual within a local government;  
56 (B) A quasi-governmental organization such as an authority created pursuant to the  
57 laws of this state;  
58 (C) A capital provider; or  
59 (D) Another private and independent third party designated by the local government.
- 60 (8) 'Program guidebook' means a comprehensive document that illustrates the applicable  
61 program and establishes appropriate guidelines, specifications, underwriting and approval  
62 criteria, and standard application forms consistent with the administration of a program  
63 and not detailed in this chapter, including:

64 (A) A form assessment contract between the local government and the property owner  
65 specifying the terms of assessment under the program, financing provided by a third  
66 party, and remedies for default or foreclosure;

67 (B) A form local government notice of assessment and C-PACER lien; and

68 (C) A form notice of assignment of assessment and C-PACER lien between a local  
69 government and a capital provider.

70 (9) 'Project application' means an application submitted to a program to demonstrate that  
71 a proposed project qualifies for C-PACER financing and for a C-PACER assessment and  
72 lien.

73 (10) 'Property owner' means the owner or owners on the title, duly recorded, of a  
74 commercial property.

75 (11) 'Qualified improvement' means a permanent improvement installed and affixed to  
76 commercial property and intended to:

77 (A) Decrease energy consumption or demand through the use of efficiency  
78 technologies, products, or activities that reduce or support the reduction of energy  
79 consumption;

80 (B) Support the production of clean, renewable energy, including through the use of  
81 a product, device, or interacting group of products or devices on the customer's side of  
82 the meter that generates electricity, provides thermal energy, or regulates temperature;

83 (C) Decrease water consumption or demand and address access to safe drinking water  
84 through the use of efficiency technologies, products, or activities that reduce or support  
85 the reduction of water consumption;

86 (D) Allow for the reduction or elimination of lead from water that may be used for  
87 drinking or cooking; or

88 (E) Increase water or waste-water resilience, including through storm retrofits, flood  
89 mitigation, and storm-water management, or wind resistance, energy storage,  
90 microgrids, and other resilience projects approved by the local government.

91 (12) 'Qualified project' means a project approved by the program administrator,  
92 involving the installation or modification of a qualified improvement, including new  
93 construction or the adaptive reuse of eligible property with a qualified improvement, and  
94 including qualified improvements installed no more than two years prior to the date of  
95 application.

96 (13) 'Record owner' means the owner listed on the property's legal documents on file or  
97 the owner of an estate for years created pursuant to a written ground lease agreement or  
98 similar agreement.

99 (14) 'Region' means a geographical area as determined by a county pursuant to Code  
100 Section 36-93-4.

101 36-93-3.

102 (a) A local government may impose a voluntary special assessment to repay the financing  
103 of qualified projects on commercial property located in a region.

104 (b) A local government shall not impose an assessment to repay the financing of the  
105 purchase or installation of products or devices not permanently affixed to commercial  
106 property.

107 (c) A local government may impose a voluntary special assessment only after a project  
108 application is approved. The special assessment shall be created through a written contract  
109 between the local government and the record owner or the owner of an estate for years of  
110 the property to be assessed, created pursuant to a written ground lease or similar agreement.

111 (d) Prior to entering into the written assessment contract, the property owner shall obtain  
112 and furnish to the local government a written statement, executed by each holder of a  
113 mortgage or deed of trust on the property securing indebtedness, in the sole and absolute  
114 discretion of each holder of a mortgage or deed of trust on the property, that consents to the  
115 assessment and indicates that the assessment does not constitute an event of default under  
116 the mortgage or deed of trust.

117 36-93-4.

118 (a) A local government may establish a C-PACER program and exercise all powers  
119 granted under this chapter.

120 (b)(1) The local government shall designate a region within its boundaries as an area in  
121 which C-PACER activities are eligible.

122 (2) If the local government is a county, then the designated region may encompass the  
123 whole of the unincorporated and incorporated areas inside the county's boundaries.

124 (c) Except as otherwise provided in subsection (g) of this Code section, a local government  
125 that establishes a program, or establishes a program through its designee, including the  
126 program administrator, may enter into a written assessment contract with a property owner  
127 to establish a voluntary assessment to repay the owner's financing of a qualified project on  
128 the owner's property so long as the conditions set forth in Code Section 36-93-3 are met.

129 (d) A local government may administer a program, delegate administration pursuant to  
130 Code Section 36-93-7, delegate administration to the program administrator, or delegate  
131 administration to a single, independent, and qualified third party for all C-PACER  
132 assessments within the region as identified in subsection (b) of this Code section.

133 (e) If the program provides for third-party administration, then the local government  
134 official authorized to enter into a written contract with a property owner pursuant to  
135 subsection (c) of this Code section shall also enter into a written contract with the program  
136 administrator. The contract shall require the third party to reimburse the local government  
137 for costs associated with monitoring the program, imposing the assessment, and billing and  
138 collecting payments on behalf of the third party.

139 (f) The financing for assessments imposed may include, but is not limited to:

140 (1) The cost of materials and labor necessary for the installation or modification of a  
141 qualified improvement;

142 (2) Permit fees;

143 (3) Inspection fees;

- 144 (4) Lender fees;  
145 (5) Program application and administrative fees;  
146 (6) Project development and engineering fees;  
147 (7) Interest reserves;  
148 (8) Capitalized interest, in an amount determined by the owner of the commercial  
149 property and the third party providing financing under this section; and  
150 (9) Other fees or costs incurred by the property owner incidental to the installation,  
151 modification, or improvement on a specific or pro rata basis, as determined by the local  
152 government.
- 153 (g) Prior to entering into the written assessment contract, the local government shall  
154 require each record owner or the owner of an estate for years created pursuant to a written  
155 ground lease agreement or similar agreement to consent to the assessment, which may be  
156 executed in the owner's sole and absolute discretion, and acknowledge in writing that the  
157 owner may be responsible for the payment of any remaining principal balance of the  
158 assessment upon the sale of the property unless the remaining balance is assumed by the  
159 acquiring property owner.
- 160 36-93-5.
- 161 (a) To establish a C-PACER program under this chapter, the local government shall:
- 162 (1) Adopt a resolution of intent that includes:
- 163 (A) A finding that the financing of qualified projects through special assessments is a  
164 valid public purpose;
- 165 (B) A statement that the local government intends to authorize direct financing  
166 between property owners and capital providers as the means to finance qualified  
167 projects;
- 168 (C) A statement that the local government intends to authorize special assessments,  
169 entered into voluntarily by a property owner with the local government by means of the

170 written assessment contract, as the means to repay the financing for qualified projects  
171 available to property owners;  
172 (D) A description of the types of qualified projects that may be subject to special  
173 assessments;  
174 (E) A description of the boundaries of the region;  
175 (F) A description of any proposed arrangements for administration of the program,  
176 including administration pursuant to this chapter, to be available;  
177 (G) A description of local government debt-servicing procedures if a third party is  
178 responsible for servicing the installment payments on the C-PACER financing, unless  
179 delegated pursuant to subsection (b) of Code Section 36-93-7;  
180 (H) A statement of the time and place for a public hearing on the proposed program as  
181 required in paragraph (2) of subsection (a) of this Code section; and  
182 (I) A statement identifying the appropriate local official and the county tax collector  
183 to consult with regard to the collection of proposed special assessments with property  
184 taxes imposed on the assessed property;  
185 (2) Hold a hearing for the public to comment on the proposed program; and  
186 (3) Adopt a resolution establishing the program and its terms.  
187 (b) Subject to the terms of the resolution establishing the program as provided in paragraph  
188 (3) of subsection (a) of this Code section, the local government may amend a program by  
189 resolution.  
190 (c) A local government or its designee, including the program administrator, is authorized  
191 to impose fees to offset the actual and reasonable costs of administering a program. The  
192 fees may be assessed as part of the program application, to be paid by the property owner  
193 requesting to participate in the program. Service fees of approved applications shall be  
194 calculated as 1 percent of the total amount financed, not to exceed \$50,000.00. Service  
195 fees retained by a local government or its designee shall be placed into a reserve account  
196 and utilized for the local government and assessor-related costs if the local government



197 chooses to exercise its authority under subsection (d) of Code Section 36-93-7. If the local  
198 government does not choose to exercise its authority under subsection (d) of Code Section  
199 36-93-7, then the funds shall be placed into an account designated by the local government  
200 or its designee.

201 36-93-6.

202 The terms of a program established pursuant to this chapter shall include:

203 (1) Appropriate eligibility factors, including certification by the property owner that:

204 (A) The property owner requesting to participate in the program:

205 (i) Is the legal owner of the benefited property;

206 (ii) Is current on mortgage and property tax payments; and

207 (iii) Is not insolvent or in bankruptcy proceedings; and

208 (B) The title of the benefited property is not in dispute;

209 (2) A requirement that:

210 (A) The amount of the assessment, plus existing indebtedness on the property, does not  
211 exceed 90 percent of the fair market value of the property as determined by a qualified  
212 appraiser, with the exception that properties qualified under the federal low-income  
213 housing tax credit program set forth in 26 U.S.C. Section 42 are exempt from this  
214 requirement; and

215 (B) The amount of the assessment does not exceed 25 percent of the fair market value  
216 of the property as determined by a qualified appraiser;

217 (3) A description of the types of qualified projects that may be subject to special  
218 assessments;

219 (4) A statement identifying the local government official authorized to enter into and  
220 execute written contracts on behalf of the local government;

221 (5) A statement that the period of the special assessment shall not exceed the weighted  
222 average of the useful life of the qualified project that is the basis for the assessment; and

223 (6) A statement explaining the procedures for imposing voluntary special assessments,  
224 the billing and collecting of the voluntary special assessments, and remedies for  
225 enforcement of delinquent special assessments, unless the local government delegates  
226 these duties pursuant to paragraph (2) of subsection (d) of Code Section 36-93-7.

227 36-93-7.

228 (a) A program shall establish a C-PACER application and review process to evaluate  
229 project applications for C-PACER financing. The program shall prescribe the form and  
230 manner of the application. Such application shall require, at a minimum, that:

231 (1) The applicant demonstrates that the project provides a benefit to the public in the  
232 form of energy or water resource conservation, reduced public health costs or risk, or  
233 reduced public emergency response cost or risk;

234 (2) For an existing building:

235 (A) Where energy or water usage improvements are proposed, an applicant shall  
236 provide:

237 (i) An energy analysis by a licensed engineering firm, engineer, or other qualified  
238 professional listed in the program guidebook; and

239 (ii) A statement by the author of the analysis that the proposed qualified  
240 improvements will either result in more efficient use or conservation of energy or  
241 water, the reduction of greenhouse gas emissions, or the addition of renewable  
242 sources of energy or water; or

243 (B) Where resilience improvements are proposed, an applicant shall provide  
244 certification by a licensed professional engineer stating that the qualified improvements  
245 will result in improved resilience;

246 (3) For new construction, an applicant shall provide certification by a licensed  
247 professional engineer or engineering firm stating that the proposed qualified

- 248 improvements will enable the project to exceed the current building code's requirements  
249 for:
- 250 (A) Energy efficiency;
  - 251 (B) Water efficiency;
  - 252 (C) Renewable energy;
  - 253 (D) Renewable water; or
  - 254 (E) Resilience; and
- 255 (4) The applicant shall certify that the economic benefits of the improvements exceed the  
256 costs of the assessment.
- 257 (b) A local government shall establish a process for reviewing and approving applications  
258 for financing. The local government may require a qualified capital provider to certify to  
259 the local government, in accordance with a process approved by the local government, that  
260 the property owner and the project qualify for financing under this chapter and comply with  
261 this chapter and the program guidebook.
- 262 (c) The local government's duties shall also include:
- 263 (1) Execution and recording of the written assessment contract between the property  
264 owner and the local government by a duly authorized official, as well as execution and  
265 recording of the local government notice of assessment and C-PACER lien; and
  - 266 (2) Execution and recording of the assignment of the assessment agreement, the notice  
267 of assessment and C-PACER lien, and notice of assignment of assessment and C-PACER  
268 lien to the capital provider.
- 269 (d) A local government may choose to bill, collect, and enforce the C-PACER assessment  
270 and lien, subject to the following guidelines:
- 271 (1) The local government may enforce the assessment lien in the same manner that a  
272 property tax lien against commercial property is enforced by the local government as  
273 follows:

274 (A) Delinquent installments of the assessment incur interest and penalties in the same  
275 manner as delinquent property taxes;  
276 (B) In an enforcement or foreclosure action, assessments not yet due shall not be  
277 accelerated or eliminated by foreclosure, including the foreclosure of a property tax;  
278 provided, however, that delinquent interest in accordance with the financing agreement  
279 shall be included in the enforcement or foreclosure action; and  
280 (C) The local government may apply the proceeds of an enforcement action in the  
281 same manner as it applies the proceeds from enforcement actions for delinquent  
282 property taxes, including the local government's right to apply the proceeds to the  
283 payment of the actual costs of the enforcement action;  
284 (2) The local government may delegate these responsibilities to the capital provider if  
285 the capital provider is solely responsible for billing, collection, and enforcement of the  
286 special assessment and lien. Under this subsection, delinquent installments incur interest  
287 and penalties as specified in the financing agreement between the property owner and  
288 capital provider. Enforcement of a delinquent installment shall be in the same manner  
289 as that of a deed of trust, except that assessments not yet due may not be accelerated or  
290 eliminated by foreclosure of the past due amount of the lien. Outstanding and delinquent  
291 property taxes at the time of the enforcement action shall be satisfied along with the  
292 delinquent amounts of the special assessment, subject to Code Section 36-93-10; and  
293 (3) The local government, its officers, and employees, are not liable at law or equity for  
294 actions taken pursuant to this section, except in cases of gross negligence, recklessness,  
295 or willful misconduct.  
296 (e) After an approved project is completed, an applicant shall provide to the local  
297 government written verification, as defined in the program guidebook, stating that the  
298 qualified project was properly completed and is operating as intended.

299 (f) For an improved project, the capital provider may be subject to an audit regarding the  
300 assignment of the C-PACER assessment and lien from the local government or program  
301 administrator.

302 36-93-8.

303 The proposed arrangements for financing a qualified project may authorize the property  
304 owner to:

305 (1) Directly purchase the related equipment and materials for the installation or  
306 modification of a qualified improvement; or

307 (2) Contract directly, including through lease, power purchase agreement, or other  
308 service contract, for the related equipment and materials used in the installation or  
309 modification of a qualified improvement.

310 36-93-9.

311 (a) A local government that authorizes financing through special assessments under this  
312 chapter shall:

313 (1) File a written notice of assessment and C-PACER lien in the records of the office of  
314 the clerk of the superior court of the county in which the property is located. The notice  
315 shall contain:

316 (A) The amount of the assessment;

317 (B) The legal description of the property;

318 (C) The name of each property owner;

319 (D) A copy of the written assessment contract; and

320 (E) A reference to this Code section authorizing the placement of the assessment and  
321 C-PACER lien on the property;

322 (2) File and record each C-PACER lien in the real property records of the county in  
323 which the property is located. The recording shall contain:

- 324 (A) The legal description of the eligible property;  
325 (B) The name of each property owner;  
326 (C) The date on which the lien was created;  
327 (D) The principal amount of the lien; and  
328 (E) The term of the lien; and
- 329 (3) Record the executed assignment of the assessment agreement, notice of assignment  
330 of assessment, and C-PACER lien, or the local government may delegate the recording  
331 to the capital provider receiving the assignment.
- 332 (b) The amount of funds allotted through a program shall be segregated from the funds  
333 necessary for property tax appeals.
- 334 36-93-10.
- 335 (a) A special assessment that complies with Code Section 36-93-3, and any interest or  
336 penalties on the assessment:
- 337 (1) Is a first and prior lien against the commercial property on which the assessment is  
338 imposed, from the date on which the notice of special assessment is recorded pursuant  
339 to Code Section 36-93-9, until the assessment, interest, or penalty is paid; and  
340 (2) Has the same priority status as a lien for an ad valorem tax.
- 341 (b) The lien runs with the land, and that portion of the assessment under the assessment  
342 contract that is not yet due shall not be accelerated or eliminated by foreclosure of a  
343 property tax lien.
- 344 (c) A provision of a deed of trust, mortgage, or other agreement between a lienholder and  
345 a property owner providing for the acceleration of any payment under the deed of trust,  
346 mortgage, or agreement solely as the result of entering into an agreement to finance an  
347 assessment is unenforceable, provided that the conditions set forth under Code Section  
348 36-93-3 are satisfied.

349 36-93-11.

350 The local government may contract with another local governmental entity, including a  
351 county board of tax assessors, to perform the duties of the local government relating to the  
352 billing, collection, enforcement, and remittance of special assessments imposed pursuant  
353 to this chapter.

354 36-93-12.

355 (a) A combination of local governments may agree to jointly implement or administer a  
356 program under this chapter.

357 (b) If two or more local governments implement a program jointly, then a single public  
358 hearing held jointly by the cooperating local governments is sufficient to satisfy the  
359 requirements of paragraph (2) of subsection (a) of Code Section 36-93-5.

360 36-93-13.

361 A local government that establishes a region under this chapter shall not:

362 (1) Make the issuance of a permit, license, or other authorization from the local  
363 government to a person who owns property in the region contingent on the person  
364 entering into a written contract to repay the financing of a qualified project through  
365 special assessments under this chapter; or

366 (2) Otherwise compel a person who owns property in the region to enter into a written  
367 contract to repay the financing of a qualified project through special assessments.

368 36-93-14.

369 The state, a county, or local government shall not use public funds to fund or repay a loan  
370 between a capital provider and property owner. This chapter does not pledge, offer, or  
371 encumber the full faith and credit of a local government. A local government shall not

372 pledge, offer, or encumber its full faith and credit for a lien amount through a C-PACER  
373 program."

374 **SECTION 2.**

375 All laws and parts of laws in conflict with this Act are repealed.