

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 378

BY BLANKSMA

AN ACT

1 RELATING TO THE COMMERCIAL PROPERTY ASSESSED CAPITAL EXPENDITURE ACT;
2 AMENDING TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 38, TI-
3 TLE 67, IDAHO CODE, TO ESTABLISH A SHORT TITLE, TO PROVIDE LEGISLATIVE
4 FINDINGS AND INTENT, TO DEFINE TERMS, TO AUTHORIZE C-PACE VOLUNTARY
5 SPECIAL ASSESSMENTS BY A LOCAL GOVERNMENT, TO AUTHORIZE A LOCAL GOVERN-
6 MENT TO ESTABLISH A C-PACE PROGRAM, TO PROVIDE PROCEDURES TO ESTABLISH
7 A C-PACE PROGRAM, TO PROVIDE C-PACE PROGRAM REQUIREMENTS, TO PROVIDE
8 FOR A C-PACE APPLICATION AND REVIEW PROCESS, TO PROVIDE FOR AUTHORIZED
9 ACTIONS BY A PROPERTY OWNER, TO REQUIRE THE RECORDATION OF CERTAIN DOCU-
10 MENTS, TO PROVIDE FOR THE EFFECT OF RECORDING, TO PROVIDE FOR CONTRACTS
11 WITH OTHER GOVERNMENTAL ENTITIES, TO AUTHORIZE JOINT IMPLEMENTATION OR
12 ADMINISTRATION, TO PROHIBIT CERTAIN ACTIONS BY A LOCAL GOVERNMENT, AND
13 TO PROHIBIT ANY USE OF FULL FAITH AND CREDIT; PROVIDING SEVERABILITY;
14 AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
15

16 Be It Enacted by the Legislature of the State of Idaho:

17 SECTION 1. That Title 67, Idaho Code, be, and the same is hereby amended
18 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
19 ter 38, Title 67, Idaho Code, and to read as follows:

20 CHAPTER 38

21 COMMERCIAL PROPERTY ASSESSED CAPITAL EXPENDITURE ACT

22 67-3801. SHORT TITLE. This act shall be known and may be cited as the
23 "Commercial Property Assessed Capital Expenditure Act."

24 67-3802. LEGISLATIVE FINDINGS AND INTENT. It is the intent of the leg-
25 islature to authorize the establishment of a commercial property assessed
26 capital expenditure (C-PACE) program that local governments may volun-
27 tarily implement to ensure that free and willing owners of agricultural,
28 commercial, industrial, or multifamily residential properties can obtain
29 low-cost, long-term financing for qualifying improvements. The legisla-
30 ture finds that enabling local governments to adopt C-PACE programs serves a
31 valid public purpose because the use of C-PACE programs will increase eco-
32 nomic development, lower insurance costs, and lower disaster and emergency
33 response costs to local governments. C-PACE programs will also decrease
34 energy and water costs and encourage energy and water sustainability.

35 67-3803. DEFINITIONS. As used in this chapter:

36 (1) "Capital provider" means a private third-party entity, including
37 its designee, successor, and assigns, that provides or funds C-PACE financ-
38 ing, including refinancing, pursuant to this chapter.

39 (2) (a) "Commercial property" means:

- 1 (i) Privately owned commercial, industrial, or agricultural real
2 property; or
3 (ii) Privately owned residential real property consisting of five
4 (5) or more dwelling units.
- 5 (b) "Commercial property" includes:
6 (i) property owned by nonprofit, charitable, or religious orga-
7 nizations; or
8 (ii) One (1) or more owner-occupied or rental condominium units
9 affiliated with a hotel.
- 10 (3) "C-PACE program" or "program" means a commercial property assessed
11 capital expenditure program established pursuant to the provisions of this
12 chapter.
- 13 (4) "Financing" means financing and refinancing for qualified projects
14 pursuant to this chapter.
- 15 (5) "Financing agreement" means a contract under which a property owner
16 agrees to repay a capital provider for the C-PACE financing, including but
17 not limited to details of finance charges, fees, debt servicing, accrual of
18 interest and penalties, and terms relating to treatment of prepayment and
19 partial payment, billing, collection, and enforcement of the C-PACE financ-
20 ing.
- 21 (6) "Local government" means a county, municipality, or other politi-
22 cal subdivision of this state.
- 23 (7) "Program administrator" means a local government department or in-
24 dividual designated to administer a C-PACE program or a private independent
25 third party designated by the local government to administer a program in
26 conformance with the administration procedures provided in this chapter.
- 27 (8) "Program guidebook" means a comprehensive document created by a lo-
28 cal government that illustrates the applicable program and establishes ap-
29 propriate guidelines, specifications, underwriting and approval criteria,
30 and standard application forms consistent with the administration of a pro-
31 gram pursuant to this chapter, including:
32 (a) A form for an assessment contract between the local government and
33 the property owner for specifying the terms of assessment under the pro-
34 gram, financing provided by a third party, and remedies for default or
35 foreclosure;
36 (b) A form for a local government notice of assessment and C-PACE lien;
37 and
38 (c) A form for a notice of assignment of assessment and C-PACE lien be-
39 tween a local government and a capital provider.
- 40 (9) "Project application" means an application submitted to a program
41 to demonstrate that a proposed project qualifies for C-PACE financing and
42 for a C-PACE assessment and lien.
- 43 (10) "Property owner" means the owner or owners on the title, duly
44 recorded, or the owner of an estate for years created pursuant to a written
45 lease agreement or similar agreement, of a commercial property;
- 46 (11) "Qualified improvement" means a permanent improvement installed
47 and affixed to commercial property and intended to:
48 (a) Decrease energy consumption or demand through the use of efficiency
49 technologies, products, or activities that reduce or support the reduc-
50 tion of energy consumption;

1 (b) Support the production of renewable energy, including through the
2 use of a product, device, or interacting group of products or devices on
3 the customer's side of the meter that generates electricity, provides
4 thermal energy, or regulates temperature;

5 (c) Decrease water consumption or demand, increase water conservation
6 and storage, and address safe drinking water through the use of effi-
7 ciency technologies, products, or activities that reduce or support the
8 reduction of water consumption or increase the storage of water;

9 (d) Allow for the reduction or elimination of lead from water that may
10 be used for drinking or cooking; or

11 (e) Increase water or wastewater resilience, including through storm
12 retrofits, flood mitigation, and stormwater management, or increase
13 wind resistance, energy storage, microgrids, or structures, measures,
14 or other improvements that reduce land use impact, and other resilience
15 projects approved by the local government.

16 (12) "Qualified project" means a project approved by the program ad-
17 ministrator, involving the installation or modification of a qualified
18 improvement, including new construction or the adaptive reuse of eligible
19 property with a qualified improvement. Qualified improvements installed
20 and operational no more than three (3) years prior to the date of application
21 are eligible as qualified projects.

22 (13) "Region" means a geographical area eligible for a C-PACE program as
23 determined by a local government pursuant to section 67-3805, Idaho Code.

24 (14) "Special assessment" means a voluntary assessment imposed by a lo-
25 cal government on real property located within the boundaries of a C-PACE
26 program.

27 67-3804. C-PACE VOLUNTARY SPECIAL ASSESSMENTS BY A LOCAL GOVERN-
28 MENT. (1) A local government may impose a voluntary special assessment to
29 repay the financing of qualified projects on commercial property located in
30 a region.

31 (2) A local government shall not impose an assessment to repay the fi-
32 nancing of the purchase or installation of products or devices not perma-
33 nently affixed to commercial property.

34 (3) A local government may impose a voluntary special assessment only
35 after a project application is approved. The special assessment must be cre-
36 ated through a written contract between the local government and the prop-
37 erty owner of the property to be assessed.

38 (4) Prior to entering into the written assessment contract, the prop-
39 erty owner shall obtain and furnish to the local government a written state-
40 ment, executed and acknowledged by an authorized officer of each holder of a
41 mortgage or deed of trust on the property securing indebtedness in the offi-
42 cer's sole and absolute discretion, consenting to the assessment and indi-
43 cating that the assessment does not constitute an event of default under the
44 mortgage or deed of trust.

45 67-3805. C-PACE PROGRAM -- AUTHORIZATION. (1) A local government may
46 establish a C-PACE program and exercise all powers granted pursuant to this
47 chapter.

1 (2) (a) The local government shall designate a region within its bound-
2 aries as an area in which C-PACE projects are permissible.

3 (b) If the local government is a county, then the region designated may
4 encompass the whole of the unincorporated and incorporated areas inside
5 the county's boundaries.

6 (3) A local government that establishes a program may enter into writ-
7 ten agreements with a property owner to impose voluntary assessments to re-
8 pay such owner's financing of a qualified project on the owner's property,
9 provided that the conditions of section 67-3804, Idaho Code, are met.

10 (4) A local government may administer a program or delegate administra-
11 tion of a program pursuant to section 67-3806(4), Idaho Code.

12 (5) If the program provides for third-party administration, then the
13 local government official authorized to enter into a written contract with
14 a property owner pursuant to section 67-3806(1) (a) (viii), Idaho Code, shall
15 also enter into a written contract with the party that administers the pro-
16 gram. The contract must require the third party to reimburse the local gov-
17 ernment for costs associated with monitoring the program, imposing the as-
18 sessment, and billing and collecting payments on behalf of the third party.

19 (6) The financing for assessments imposed may include but is not lim-
20 ited to:

21 (a) The cost of materials and labor necessary for the installation or
22 modification of a qualified improvement;

23 (b) Permit fees;

24 (c) Inspection fees;

25 (d) Lender fees;

26 (e) Program application and administrative fees;

27 (f) Project development and engineering fees;

28 (g) Interest reserves;

29 (h) Capitalized interest, in an amount determined by the owner of the
30 commercial property and the third party providing financing pursuant to
31 this chapter; and

32 (i) Other fees or costs incurred by the property owner incidental or an-
33 cillary to the installation, modification, or improvement on a specific
34 or pro rata basis, as determined by the local government.

35 (7) The written assessment contract constitutes written notice to the
36 property owner that the owner may be responsible for the payment of any re-
37 maining principal balance of the assessment upon the refinance or sale of the
38 property unless the remaining principal balance is assumed by the acquiring
39 property owner. The local government shall require each property owner to
40 acknowledge, in writing, the notice as part of the execution of the contract.

41 67-3806. PROCEDURES TO ESTABLISH A C-PACE PROGRAM. (1) To establish a
42 C-PACE program pursuant to this chapter, the local government must:

43 (a) Adopt a resolution of intent that includes:

44 (i) A finding that the financing of qualified projects through
45 special assessments is a valid public purpose;

46 (ii) A statement that the local government intends to authorize
47 direct financing between property owners and capital providers as
48 the means to finance qualified projects;

1 (iii) A statement that the local government intends to authorize
 2 special assessments, entered into voluntarily by a property owner
 3 with the local government by means of the written assessment con-
 4 tract, to repay the financing for qualified projects available to
 5 property owners;

6 (iv) A description of the types of projects that may qualify for
 7 voluntary special assessments;

8 (v) A description of the boundaries of the region;

9 (vi) A description of the proposed arrangements for administra-
 10 tion of the program according to the provisions of this chapter;

11 (vii) A statement of the time and place for a public hearing on the
 12 proposed program as required in paragraph (b) of this subsection;
 13 and

14 (viii) A statement designating the local official, department,
 15 or employee charged with administering the program and executing
 16 written agreements with property owners to impose voluntary as-
 17 sessments on a property.

18 (b) Hold a hearing for the public to comment on the proposed program as
 19 outlined in the resolution of intent; and

20 (c) Following such hearing, adopt a resolution establishing the pro-
 21 gram and its terms.

22 (2) Subject to the terms of the resolution establishing the program
 23 as provided in subsection (1) (c) of this section, the local government may
 24 amend a program by resolution.

25 (3) The enactment of a resolution establishing a program and its terms
 26 shall allow a local government to place voluntary special assessments on
 27 property without any additional action by the local government.

28 (4) A local government may:

29 (a) Hire and set the compensation of a program administrator and pro-
 30 gram staff; or

31 (b) Delegate or contract for professional or administrative services
 32 necessary to administer the program on a nonexclusive basis.

33 (5) A local government is authorized to impose service fees to offset
 34 the actual and reasonable costs of administering a program. A fee of no more
 35 than five hundred dollars (\$500) may be charged at the time of a property
 36 owner's application. In addition, a servicing fee for approved applications
 37 may be calculated as one percent (1%) of the total amount financed, not to ex-
 38 ceed fifty thousand dollars (\$50,000).

39 67-3807. C-PACE PROGRAM REQUIREMENTS. The terms of a program estab-
 40 lished pursuant to section 67-3806(3), Idaho Code, shall include:

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

43 (a) The property owner requesting to participate in the program:

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

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

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

47 (b) The title of the benefited property is not in dispute;

48 (2) A requirement that:

1 (a) The total debt secured by the property, including the C-PACE as-
 2 sessment, does not exceed ninety percent (90%) of the fair market value
 3 of the property as complete or as stabilized;

4 (b) The C-PACE assessment does not exceed:

5 (i) In the case of new construction, thirty-five percent (35%) of
 6 the fair market value of the property as complete or as stabilized;
 7 or

8 (ii) In the case of a retrofit of existing property, twenty-five
 9 percent (25%) of the fair market value of the property as completed
 10 or as stabilized; and

11 (c) The determination of fair market value shall be established by a
 12 qualified appraisal completed no more than twelve (12) months prior to
 13 the time of application;

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

16 (4) A statement identifying the local government official authorized
 17 to enter into and execute written contracts on behalf of the local govern-
 18 ment;

19 (5) A statement that the period of the special assessment must not ex-
 20 ceed the weighted average of the useful life of the qualified project that is
 21 the basis for the assessment;

22 (6) A statement explaining the manner in which property will be as-
 23 sessed and how assessments will be collected; and

24 (7) The procedures for billing and collecting voluntary special as-
 25 sements and remedies for enforcement of a delinquent special assessment.

26 67-3808. C-PACE APPLICATION AND REVIEW PROCESS. (1) A local govern-
 27 ment participating in a C-PACE program must establish the form and manner of
 28 a C-PACE application and review process to evaluate project applications for
 29 C-PACE financing. At a minimum, an application shall require that:

30 (a) An applicant must demonstrate that the project provides one (1) or
 31 more of the following benefits to the public:

32 (i) Energy or water resource conservation;

33 (ii) Reduced public health costs or risk; or

34 (iii) Reduced public emergency response cost or risk.

35 (b) For an existing building, an applicant must provide an energy anal-
 36 ysis by a licensed engineering firm, engineer, or other qualified pro-
 37 fessional listed in the program guidebook and:

38 (i) Where energy or water usage improvements are proposed, a
 39 statement by the author of the analysis that the proposed quali-
 40 fied improvements will result in either more efficient use or con-
 41 servation of energy or water or the addition of renewable sources
 42 of energy or water; or

43 (ii) Where resilience improvements are proposed, a statement by
 44 the author of the analysis that the qualified improvements will
 45 result in improved resilience; and

46 (c) For new construction, an applicant must provide certification
 47 by a licensed engineering firm, engineer, or other qualified profes-
 48 sional stating that the proposed qualified improvements will enable the
 49 project to:

1 (i) Exceed the current building code's requirements for:

- 2 1. Energy efficiency;
- 3 2. Water efficiency;
- 4 3. Renewable energy; or
- 5 4. Renewable water; or

6 (ii) Meet or exceed resilience standards for the local govern-
7 ment's building codes or, if none are available, compliance with a
8 nationally available and recognized resiliency standard.

9 (2) A local government shall establish a process for reviewing and
10 approving applications for financing. The local government may require a
11 capital provider to certify to the local government, in accordance with a
12 process approved by the local government, that the property owner and the
13 project meet the requirements of this chapter and the program guidebook and
14 qualify for financing pursuant to this chapter.

15 (3) The local government's duties shall also include:

16 (a) Execution and recording of the written assessment contract between
17 the property owner and a duly authorized official of the local govern-
18 ment, as well as execution and recording of the local government notice
19 of assessment and C-PACE lien; and

20 (b) Execution and recording of the notice of assessment and C-PACE
21 lien, assignment of the assessment agreement to the capital provider,
22 and notice of assignment of assessment and C-PACE lien to the capital
23 provider.

24 (4) The local government may bill, collect, and enforce the special as-
25 sessment in the same time and same manner as a property tax, or the local
26 government may assign to the capital provider providing financing the sole
27 responsibility for billing, collection, and enforcement of the special as-
28 sessment and lien. The decision of the local government to delegate must be
29 made no later than the execution of the written assessment contract. After
30 one (1) year from the date of any delinquency, enforcement of a delinquent
31 assessment payment by a capital provider shall be made in the same manner as
32 that prescribed in chapter 15, title 45, Idaho Code, for a deed of trust, ex-
33 cept assessments not yet due may not be accelerated or eliminated by foreclo-
34 sure of the past due amounts of the lien, or a property tax foreclosure or any
35 other foreclosure of an indebtedness on the property. In any enforcement ac-
36 tion by either the local government or capital provider, any outstanding and
37 delinquent local property taxes at the time of the enforcement action must be
38 satisfied prior to the delinquent amounts of the special assessment.

39 (5) The local government, its officers, and employees are not liable at
40 law or equity for actions taken pursuant to this section, except in cases of
41 gross negligence, recklessness, or willful misconduct.

42 (6) After an approved project is completed, an applicant shall provide
43 to the local government written verification, as defined in the program
44 guidebook, stating that the qualified project was properly completed and is
45 operating as intended.

46 67-3809. AUTHORIZED ACTIONS. The proposed arrangements for financing
47 a qualified project may authorize the property owner to:

48 (1) Directly purchase the equipment and materials for the installation
49 or modification of a qualified improvement; or

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

4 67-3810. RECORDING OF CERTAIN DOCUMENTS REQUIRED. (1) A local govern-
5 ment that authorizes financing through special assessments pursuant to this
6 chapter shall:

7 (a) File a written notice of assessment and C-PACE lien in the records
8 of the office of the county register of deeds of the county in which the
9 property is located. The notice must contain:

- 10 (i) The amount of the assessment;
- 11 (ii) The legal description of the property;
- 12 (iii) The name of each property owner;
- 13 (iv) A copy of the written assessment contract; and
- 14 (v) A reference to this chapter authorizing the placement of the
15 assessment and C-PACE lien on the property;

16 (b) File and record each C-PACE lien in the real property records of the
17 county in which the property is located. The recording must contain:

- 18 (i) The legal description of the property;
- 19 (ii) The name of each property owner;
- 20 (iii) The date on which the lien was created;
- 21 (iv) The principal amount of the lien; and
- 22 (v) The term of the lien; and

23 (c) Record the executed assignment of the assessment agreement, notice
24 of assignment of assessment, and C-PACE lien.

25 (2) A local government may delegate the recording responsibilities set
26 forth in subsection (1) of this section to the capital provider receiving the
27 assignment. If billing, collection, and enforcement are delegated to the
28 capital provider, a copy of the assignment and delegation shall be recorded
29 in addition to the requirements of subsection (1) of this section.

30 67-3811. EFFECT OF RECORDING. (1) A special assessment and any inter-
31 est or penalties on the assessment:

- 32 (a) Is a first and prior lien against the commercial property on which
33 the assessment is imposed, from the date on which the notice of special
34 assessment is recorded pursuant to section 67-3810, Idaho Code, until
35 the assessment, interest, and penalty is paid; and
- 36 (b) Is junior to any lien for any other local government property tax or
37 ad valorem tax.

38 (2) The lien runs with the land, and any portion of the assessment under
39 the assessment contract that is not yet due must not be accelerated or elimi-
40 nated by foreclosure of a property tax lien or any other foreclosure.

41 (3) A provision of a deed of trust, mortgage, or other agreement be-
42 tween a lienholder and a property owner providing for the acceleration of
43 any payment under the deed of trust, mortgage, or agreement solely as the
44 result of entering into an agreement to finance an assessment authorized by
45 this chapter is unenforceable as to an executed consent pursuant to section
46 67-3804(4), Idaho Code. A lienholder or loan servicer may increase the
47 monthly amount held in escrow as required to annually pay the assessment.

1 67-3812. CONTRACTS WITH OTHER GOVERNMENTAL ENTITIES. The local gov-
2 ernment implementing a C-PACE program pursuant to this chapter may contract
3 with another local governmental entity, including a county assessor of prop-
4 erty, to perform the duties of the local government relating to the billing,
5 collection, enforcement, and remittance of special assessments imposed pur-
6 suant to this chapter.

7 67-3813. JOINT IMPLEMENTATION OR ADMINISTRATION. (1) A combination
8 of local governments may agree to jointly implement or administer a program
9 pursuant to this chapter.

10 (2) If two (2) or more local governments implement a program jointly,
11 then a single public hearing held jointly by the cooperating local govern-
12 ments is sufficient to satisfy section 67-3806(1) (b), Idaho Code.

13 (3) One (1) or more local governments may contract with a third party,
14 including another local government, to administer a C-PACE program on a
15 nonexclusive basis.

16 (4) If one (1) or more local governments contract with a third party,
17 including another local government, to administer a C-PACE program, then
18 other qualified third parties must also be granted the right to enter into a
19 contract to administer the program on the same terms.

20 67-3814. PROHIBITED ACTIONS. A local government that establishes a
21 region, as defined in section 67-3803, Idaho Code, shall not:

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

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

29 67-3815. NO FULL FAITH AND CREDIT. The state or any local government
30 shall not use public funds to fund or repay a loan between a capital provider
31 and a property owner. This chapter does not pledge, offer, or encumber
32 the full faith and credit of a local government. A local government shall
33 not pledge, offer, or encumber its full faith and credit for a lien amount
34 through a C-PACE program.

35 SECTION 2. SEVERABILITY. The provisions of this act are hereby declared
36 to be severable and if any provision of this act or the application of such
37 provision to any person or circumstance is declared invalid for any reason,
38 such declaration shall not affect the validity of the remaining portions of
39 this act.

40 SECTION 3. An emergency existing therefor, which emergency is hereby
41 declared to exist, this act shall be in full force and effect on and after
42 July 1, 2023.