

The Senate Committee on State and Local Governmental Operations - General offered the following substitute to HB 206:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 62 of Title 36 of the Official Code of Georgia Annotated, relating to
2 development authorities, so as to authorize development authorities to provide certain
3 financing for qualifying improvements, including energy efficiency, water conservation,
4 renewable energy, and resiliency improvements; to provide for powers; to provide for
5 financial obligations; to provide a short title; to provide for legislative findings and intent;
6 to provide for cities and counties to cooperate with development authorities in financing
7 qualifying improvements by imposing special assessments on qualifying commercial
8 properties; to provide for the collection and lien status of such assessments; to provide for
9 definitions; to provide for related matters; to provide for an effective date; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**
13 Chapter 62 of Title 36 of the Official Code of Georgia Annotated, relating to development
14 authorities, is amended by redesignating Code Sections 36-62-1 through 36-62-14 as
15 Article 1.

16

SECTION 2.

17 Said chapter is further amended by adding a new Code section to read as follows:

18 "36-62-2.1.19 As used in this chapter, the term:20 (1) 'Assessment' means a special assessment imposed by a participating local
21 government pursuant to Article 2 of this chapter.22 (2) 'Assessment agreement' means an agreement between an authority and a qualifying
23 property owner in which, among other things, the authority agrees to pay the costs of
24 qualifying improvements and the qualifying property owner voluntarily requests
25 assessments to be imposed by the participating local government on the qualifying
26 property.27 (3) 'Assessment financing' means the financing or refinancing of qualifying
28 improvements.29 (4) 'Capital provider' means a private entity or its designee, successor, or assign that
30 purchases an obligation of an authority pursuant to this article.31 (5) 'Cost of the qualifying improvements' or 'cost of any qualifying improvement' means
32 and includes:33 (A) All costs of acquisition (by purchase or otherwise), construction, assembly,
34 installation, modification, renovation, or rehabilitation incurred in connection with any
35 qualifying improvement or any part of any qualifying improvement;36 (B) All costs of real property, fixtures, or materials used in or in connection with or
37 necessary for any qualifying improvement or for any facilities related thereto,
38 including, but not limited to, the cost of all easements, rights, improvements, water
39 rights, connections for utility services, fees, franchises, permits, approvals, licenses, and
40 certificates; the cost of securing any such franchises, permits, approvals, licenses, or
41 certificates; and the cost of preparation of any application therefor and the cost of all

42 labor and materials used in or in connection with or necessary for any qualifying
43 improvement;

44 (C) All financing charges and loan fees and all interest on revenue bonds, notes, or
45 other obligations of an authority that accrues or is paid prior to and during the period
46 of construction of a qualifying improvement and during such additional period as the
47 authority may reasonably determine to be necessary to place such qualifying
48 improvement in operation;

49 (D) All costs of engineering, architectural, and legal services and all expenses incurred
50 by engineers, architects, and attorneys in connection with any qualifying improvement;

51 (E) All expenses for inspection and any third-party review or verification fees;

52 (F) All fees of fiscal agents, paying agents, and trustees for bondholders under any trust
53 agreement, indenture of trust, or similar instrument or agreement; all expenses incurred
54 by any such fiscal agents, paying agents, and trustees; and all other costs and expenses
55 incurred relative to the issuance of any revenue bonds, notes, or other obligations for
56 any qualifying improvement, including capital provider's fees;

57 (G) All fees of any type charged by an authority in connection with any qualifying
58 improvement;

59 (H) All expenses necessary or incidental to determining the feasibility or practicability
60 of any qualifying improvement;

61 (I) All costs of plans and specifications for any qualifying improvement;

62 (J) Repayment of any loans made for the advance payment of any part of any of the
63 foregoing costs, including interest thereon and any other expenses of such loans;

64 (K) Administrative expenses of the authority and such other expenses as may be
65 necessary or incidental to any qualifying improvement or the financing thereof or the
66 placing of any qualifying improvement in operation; and

67 (L) The establishment of a fund or funds for the creation of a debt service reserve, a
68 renewal and replacement reserve, or such other funds or reserves, including for ad

69 valorem taxes and insurance, as the authority may approve with respect to the financing
70 and operation of any qualifying improvement and as may be authorized by any bond
71 resolution, trust agreement, indenture of trust, or similar instrument or agreement
72 pursuant to the provisions of which the issuance of any revenue bonds, notes, or other
73 obligations of the authority may be authorized.

74 Any cost, obligation, or expense incurred for any of the foregoing purposes shall be a part
75 of such defined term and may be paid or reimbursed as such out of proceeds of revenue
76 bonds, notes, or other obligations issued by the authority.

77 (6) 'Financing application' means an application submitted to an authority or program
78 administrator to demonstrate that the proposed improvements qualify for financing
79 pursuant to a program.

80 (7) 'Intergovernmental assessment agreement' means a contract entered into pursuant to
81 Article IX, Section III, Paragraph I of the Constitution of Georgia between a county or
82 a municipal corporation, as party of the first part, and an authority, as party of the second
83 part, pursuant to which the county or municipal corporation agrees to make payments to
84 the authority, the sole source of which shall be assessments, to furnish financial
85 assistance to aid in the planning, undertaking, or carrying out of a qualifying
86 improvement.

87 (8) 'Participating local government' means a municipal corporation or a county that
88 enters into an intergovernmental assessment agreement with an authority.

89 (9) 'Program' means a commercial property assessed conservation, energy, and resiliency
90 program established by an authority.

91 (10) 'Program administrator' means any official or agency designated by an authority to
92 administer a program or a private and independent third party designated by an authority
93 to administer a program, provided that the administration procedures used conform to the
94 requirements of this article.

95 (11) 'Program guidebook' means a comprehensive document that establishes appropriate
96 guidelines, specifications, approval criteria, and other standard forms consistent with
97 administering a program and not detailed in this article, including forms for an
98 assessment agreement, notice of assessment, and financing application.

99 (12) 'Qualifying improvement' means a permanently affixed energy efficiency
100 improvement, renewable energy improvement, water conservation improvement, or
101 resiliency improvement installed on qualifying property as part of the construction or
102 renovation of the qualifying property.

103 (13) 'Qualifying property' means privately owned or leased commercial, industrial, or
104 agricultural real property or multifamily residential real property with five or more
105 dwelling units.

106 (14) 'Resiliency improvement' means any improvement to qualifying property intended
107 to increase resilience and improve durability of such property, including, but not limited
108 to, seismic retrofits, flood mitigation, fire suppression, wind resistance, energy storage,
109 microgrids, and backup power generation."

110 **SECTION 3.**

111 Said chapter is further amended by adding a new Code section to read as follows:

112 "36-62-6.2.

113 (a) In addition to the powers otherwise granted in this article, each authority shall have the
114 following powers:

115 (1) To make and execute intergovernmental assessment agreements, assessment
116 agreements, and agreements for grants or loans to finance or refinance qualifying
117 improvements;

118 (2) To finance by loan, grant, or otherwise, including through assessment agreements,
119 and refinance qualifying improvements and to pay the cost of any qualifying
120 improvement from the proceeds of revenue bonds, notes, or other obligations of the

121 authority or any other funds of the authority, or from any contributions or loans by
122 persons, corporations, partnerships, whether limited or general, or other entities, all of
123 which the authority is authorized to receive, accept, and use;

124 (3) To issue revenue bonds, notes, or other obligations of the authority and use the
125 proceeds thereof for the purpose of paying, or loaning or granting the proceeds thereof
126 to pay, all or any part of the cost of any qualifying improvement and otherwise to further
127 or carry out the public purpose of the authority and to pay all costs of the authority
128 incidental to, or necessary and appropriate to, furthering or carrying out such purpose;

129 (4) To extend credit or make loans or grants to any person, corporation, partnership,
130 whether limited or general, or other entity for the costs of any qualifying improvement
131 or any part of the costs of any qualifying improvement, which credit, loans, or grants may
132 be evidenced or secured by loan agreements, grant agreements, assessment agreements,
133 notes, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, or
134 such other instruments, or by assessments, revenues, fees, or charges, upon such terms
135 and conditions as the authority shall determine to be reasonable in connection with such
136 extension of credit, loans, or grants, including provision for the establishment and
137 maintenance of reserve funds; and, in the exercise of powers granted by this article in
138 connection with any qualifying improvement, the authority shall have the right and power
139 to require the inclusion in any such loan agreement, grant agreement, assessment
140 agreement, note, mortgage, deed to secure debt, trust deed, security agreement,
141 assignment, or other instrument of such provisions or requirements for guaranty of any
142 obligations, insurance, construction, use, operation, maintenance, and financing of a
143 qualifying improvement, and such other terms and conditions as the authority may deem
144 necessary or desirable;

145 (5) As security for repayment of any revenue bonds, notes, or other obligations of the
146 authority, to pledge, convey, assign, hypothecate, or otherwise encumber any property
147 of the authority, including, but not limited to, contract rights under intergovernmental

148 assessment agreements and revenues or other funds, and to execute any trust indenture;
149 trust agreement; agreement for the sale of the authority's revenue bonds, notes, or other
150 obligations; loan agreement; security agreement; assignment; or other agreement or
151 instrument as may be necessary or desirable, in the judgment of the authority, to secure
152 any such revenue bonds, notes, or the obligations, which instruments or agreements may
153 provide for foreclosure or forced sale of any property of the authority upon default in any
154 obligation of the authority, either in payment of principal, premium, if any, or interest or
155 in the performance of any term or condition contained in any such agreement or
156 instrument. The State of Georgia, on behalf of itself and each county, municipal
157 corporation, political subdivision, or taxing district therein, waives any right it or such
158 county, municipal corporation, political subdivision, or taxing district may have to
159 prevent the forced sale or foreclosure of any property of the authority upon such default
160 and agrees that any agreement or instrument encumbering such property may be
161 foreclosed in accordance with law and the terms thereof;

162 (6) To receive and use the proceeds of any assessment imposed by a municipal
163 corporation or a county to pay the costs of any qualifying improvement or for any other
164 purpose for which the authority may use its own funds pursuant to this article, including
165 the payment of principal or premium, if any, and interest on revenue bonds, notes, or
166 other obligations of the authority; and

167 (7) To establish and administer programs and to appoint, select, and employ program
168 administrators and to fix their compensation and pay their expenses.

169 (b) When an authority exercises its grant powers given by subsection (a) of this Code
170 section, in determining compliance with Article III, Section VI, Paragraph VI(a) of the
171 Constitution of Georgia, the authority may take into consideration the assessments to be
172 paid by the grant recipient, as well as the substantiality of the public purpose to be achieved
173 by the grant."

174

SECTION 4.

175 Said chapter is further amended by adding new Code sections to read as follows:

176 "36-62-8.1.

177 (a) Revenue bonds, notes, or other obligations issued by an authority to finance or
178 refinance the cost of any qualifying improvement shall be paid solely from the property,
179 including, but not limited to, contract rights, revenues, or other funds, pledged, conveyed,
180 assigned, hypothecated, or otherwise encumbered to secure or to pay such bonds, notes, or
181 other obligations.

182 (b) All revenue bonds, notes, and other obligations shall be authorized by resolution of the
183 authority, adopted by a majority vote of the directors of the authority at a regular or special
184 meeting.

185 (c) Revenue bonds, notes, or other obligations issued to finance or refinance the cost of
186 any qualifying improvement shall bear such date or dates; shall mature at such time or
187 times, not more than 40 years from their respective dates; shall bear interest at such rate or
188 rates, which may be fixed or may fluctuate or otherwise change from time to time; shall be
189 subject to redemption on such terms; and shall contain such other terms, provisions,
190 covenants, assignments, and conditions as the resolution authorizing the issuance of such
191 bonds, notes, or other obligations may permit or provide. The terms, provisions, covenants,
192 assignments, and conditions contained in or provided or permitted by any resolution of the
193 authority authorizing the issuance of such revenue bonds, notes, or other obligations shall
194 bind the directors of the authority then in office and their successors.

195 (d) The authority shall have the power from time to time and whenever it deems it
196 expedient to refund any revenue bonds, notes, or other obligations issued to finance or
197 refinance the cost of any qualifying improvement by the issuance of new revenue bonds,
198 notes, or other obligations, whether or not the revenue bonds, notes, or other obligations
199 to be refunded have matured, and may issue revenue bonds, notes, or other obligations
200 partly to refund revenue bonds, notes, or other obligations then outstanding and partly for

201 any other purpose permitted under this article. The refunding revenue bonds, notes, or
202 other obligations may be exchanged for the revenue bonds, notes, or other obligations to
203 be refunded, with such cash adjustments as may be agreed upon, or may be sold and the
204 proceeds applied to the purchase or redemption of the revenue bonds, notes, or other
205 obligations to be refunded.

206 (e) There shall be no limitation upon the amount of revenue bonds, notes, or other
207 obligations that an authority may issue to finance or refinance the cost of any qualifying
208 improvement. Any limitations with respect to interest rates or any maximum interest rate
209 or rates found in Article 3 of Chapter 82 of this title, the 'Revenue Bond Law,' the usury
210 laws of this state, or any other laws of this state shall not apply to revenue bonds, notes, or
211 other obligations of an authority issued to finance or refinance the cost of any qualifying
212 improvement.

213 (f) All revenue bonds issued by an authority under this article to finance or refinance the
214 cost of any qualifying improvement shall be issued and validated under and in accordance
215 with Article 3 of Chapter 82 of this title, the 'Revenue Bond Law,' except as provided in
216 this article, provided that notes and other obligations of an authority may, but shall not be
217 required to, be so validated.

218 (g) The terms 'cost of the qualifying improvement' and 'cost of any qualifying
219 improvement' shall have the meaning prescribed in this article whenever those terms are
220 referred to in bond resolutions of an authority; in bonds, notes, or other obligations of an
221 authority; or in notices or proceedings to validate such bonds, notes, or other obligations
222 of an authority.

223 36-62-8.2.

224 (a) A program shall establish a financing application and review process to evaluate such
225 applications. The program shall prescribe the form and manner of the financing
226 application. At a minimum:

- 227 (1) An applicant shall demonstrate that the qualifying improvement provides a benefit
228 to the public in the form of energy or water resource conservation or improved resiliency;
- 229 (2) For an existing building:
- 230 (A) When energy or water efficiency improvements are proposed, an applicant shall
231 provide:
- 232 (i) An energy or water efficiency analysis by a licensed engineering firm, engineer,
233 or other qualified professional listed in the program guidebook; and
- 234 (ii) A statement by the author of the analysis that the proposed qualifying
235 improvements will result in more efficient use or conservation of energy or water, the
236 reduction of greenhouse gas emissions, or the addition of renewable sources of energy
237 or water; or
- 238 (B) When resiliency improvements are proposed, an applicant shall provide
239 certification by a licensed engineering firm, engineer, or other qualified professional
240 listed in the program guidebook stating that the proposed qualifying improvements will
241 result in improved resilience;
- 242 (3) For new construction, an applicant shall provide certification by a licensed
243 engineering firm, engineer, or other qualified professional listed in the program
244 guidebook stating that the proposed qualifying improvements will enable the qualifying
245 property to exceed the current building code requirements for:
- 246 (A) Energy efficiency;
- 247 (B) Water efficiency;
- 248 (C) Renewable energy; or
- 249 (D) Resilience;
- 250 (4) An applicant shall include a certification that the person requesting the proposed
251 qualifying improvements is the owner of the qualifying property and that there are no
252 delinquent taxes or assessments on the qualifying property; and

253 (5) An applicant shall demonstrate that the proposed assessment financing meets the
254 following guidelines and any other guidelines adopted by the authority, which may be in
255 addition to or more restrictive than the following guidelines:

256 (A) Unless a higher percentage is agreed to by the holder of a lien, mortgage, or
257 security deed encumbering the qualifying property in the written consent required by
258 subsection (b) of this Code section, an applicant must demonstrate that the amount of
259 the proposed assessment financing and all other debt secured by the qualifying property
260 upon execution of the assessment agreement will not exceed 80 percent of the fair
261 market value of the qualifying property as determined by a qualified appraiser, which
262 appraisal may take into account the expected increase in fair market value of the
263 qualifying property resulting from the proposed qualifying improvements, as completed
264 or as stabilized;

265 (B) An applicant must demonstrate that the amount of the proposed assessment
266 financing will not exceed 25 percent of the fair market value of the qualifying property
267 as determined by a qualified appraiser, which appraisal may take into account the
268 expected increase in fair market value of the qualifying property resulting from the
269 proposed qualifying improvements, as completed or as stabilized; and

270 (C) An applicant must demonstrate that the period or term of the assessment financing
271 will not exceed the weighted average useful life expected for the proposed qualifying
272 improvements. The applicant shall include a statement from a qualified professional
273 indicating the weighted average useful life expected for the proposed qualifying
274 improvements.

275 (b) For approved qualifying improvements, an authority may enter into an assessment
276 agreement with the owner of the qualifying property to pay the cost of qualifying
277 improvements. Prior to entering into an assessment agreement, an applicant shall provide
278 written consent from any holder of a lien, mortgage, or security deed encumbering the
279 qualifying property. Such written consent shall be signed in the sole and absolute

280 discretion of the holder of a prior lien, mortgage, or security deed encumbering the
281 qualifying property and, at a minimum, shall state that the holder of such prior lien,
282 mortgage, or security deed has reviewed the final terms of the financing and the assessment
283 agreement; that the qualifying property may participate in the program; and that the
284 assessment lien shall have the same priority status as a lien for ad valorem taxes of the
285 participating local government.

286 (c) Each assessment agreement shall include:

287 (1) A description of the qualifying improvements;

288 (2) A statement describing the procedures for billing and collection of assessments to be
289 imposed by the participating local government pursuant to an intergovernmental
290 assessment agreement, which the owner of the qualifying property shall voluntarily
291 request to be imposed and shall agree to pay either directly or through an escrow account
292 that may be established or increased by a prior lien holder on the qualifying property;

293 (3) The total amount of the assessment;

294 (4) A schedule of assessment installments requested to be imposed by the participating
295 local government;

296 (5) Any administrative fees to be paid to the authority or to the participating local
297 government pursuant to the related intergovernmental assessment agreement;

298 (6) The number of years the assessment shall be imposed on the qualifying property; and

299 (7) The conditions under which the owner of the qualifying property may prepay and
300 permanently satisfy the unpaid portion of the assessment and remove the assessment lien
301 from the qualifying property, including a description of the terms of any prepayment
302 penalty.

303 (d) An assessment agreement may authorize the owner of the qualifying property to
304 contract directly, including through lease, power purchase agreement, or other service
305 contract, for installing or modifying a qualifying improvement.

306 (e) Upon execution of an assessment agreement by an owner of the qualifying property
307 and an authority, the authority shall cause the participating local government to execute and
308 record a notice of assessment in the land record of the jurisdiction in which the qualifying
309 property is located, in accordance with Article 2 of this chapter.

310 (f) No authority described in this article shall grant any capital provider the exclusive right
311 to provide financing or refinancing on a program-wide basis. It is the intent of this
312 subsection to enable owners of qualifying properties to recommend to authorities the
313 capital providers to finance or refinance the qualifying improvements owned or to be
314 owned by such qualifying property owners."

315 **SECTION 5.**

316 Said chapter is further amended by adding a new article to read as follows:

317 "ARTICLE 2

318 36-62-15.

319 This article shall be known and may be cited as the 'Commercial Property Assessed
320 Conservation, Energy, and Resiliency Cooperation Law.'

321 36-62-16.

322 The General Assembly finds that it is in the public interest and vital to the public welfare
323 of the people of the State of Georgia, and it is declared to be the intent of this article, to
324 authorize municipal corporations and counties to enact ordinances or resolutions to
325 establish commercial property assessed conservation, energy, and resiliency programs and
326 to enter into agreements with development authorities to carry out such programs, all for
327 the purpose of developing trade, commerce, industry, and employment opportunities. It
328 is found and declared that the assistance provided in this article for the purposes set forth

329 in Article 1 of this chapter constitutes a public use and purpose and an essential
330 governmental function for which public moneys may be spent and that the provisions
331 enacted in this article are necessary in the public interest.

332 36-62-17.

333 (a) For the purpose of aiding and cooperating in the planning, undertaking, constructing,
334 or carrying out of qualifying improvements located within the area in which it is authorized
335 to act, any municipal corporation or county, upon such terms, with or without
336 consideration, as it may determine, may:

337 (1) Enter into intergovernmental assessment agreements with an authority respecting
338 action to be taken by such municipal corporation or county pursuant to any of the powers
339 granted by this article, including the furnishing of funds or other assistance in connection
340 with qualifying improvements, provided that the obligations of any such municipal
341 corporation or county under any such intergovernmental assessment agreement shall be
342 limited obligations payable solely from assessments;

343 (2) Do any and all things necessary or convenient to aid or cooperate in the planning,
344 undertaking, constructing, and carrying out of qualifying improvements; and

345 (3) Grant or contribute assessments to an authority or agree to take such action.

346 (b) Any participating local government shall have the power to impose, bill, and collect
347 assessments and to pledge and assign assessments to an authority to secure its obligations
348 under an intergovernmental assessment agreement.

349 (c) Pursuant to Code Section 36-62-8.2, an authority may enter into an assessment
350 agreement with an owner of qualifying property for qualifying improvements, under which
351 such owner voluntarily agrees to the imposition of assessments under this article. After an
352 assessment agreement is entered into, and upon notice from the authority, a participating
353 local government shall have the power to execute and record a notice of assessment on the

354 subject property in the real property records of the relevant county. Such notice of
355 assessment shall contain:

356 (1) The principal amount of the assessment;

357 (2) The legal description of the property;

358 (3) The name of each property owner;

359 (4) A copy of the assessment agreement, including a schedule of assessments to be
360 imposed by the participating local government; and

361 (5) A reference to subsection (d) of this Code section authorizing the creation of an
362 assessment lien to secure an assessment imposed under this article.

363 (d) An assessment imposed by a participating local government under this article:

364 (1) Is a lien against the property on which the assessment is imposed, from the date on
365 which the notice of assessment is recorded until the assessment, interest, and penalties
366 are paid in full; and

367 (2) Has the same priority status as a lien for ad valorem taxes levied by the participating
368 local government.

369 (e) The assessment lien created under this article runs with the land and that portion of the
370 assessment that is not yet due may not be accelerated or eliminated by foreclosure of a
371 property tax lien or other lien.

372 (f) Assessments imposed under this article shall be billed and collected in installments in
373 the same manner, by the same tax collector, and at the same times as ad valorem taxes
374 levied by the participating local government are billed and collected. The tax collector may
375 include any assessment installment as a separate line item on an ad valorem tax bill or may
376 send a separate bill for any assessment installment. The participating local government
377 may charge fees that shall reflect the reasonable costs of the tax collector for his or her
378 actions under this subsection and that shall be added to the assessment. The tax collector
379 shall be a party signatory to each intergovernmental assessment agreement entered into by
380 a participating local government. All proceeds of assessment installments received by a

381 participating local government, net of administrative fees of the participating local
382 government, that are subject to a pledge created in an intergovernmental assessment
383 agreement shall be remitted to the applicable authority pursuant to the terms of the
384 intergovernmental assessment agreement.

385 (g) A delinquent assessment installment that is unpaid when due shall incur interest and
386 penalties in the same manner as delinquent ad valorem taxes and shall be enforced by or
387 on behalf of the participating local government in the same manner as its ad valorem tax
388 liens. All proceeds from enforcing a delinquent assessment installment and related
389 penalties and interest received by a participating local government that are subject to a
390 pledge created in an intergovernmental assessment agreement shall be remitted to the
391 applicable authority pursuant to the terms of the intergovernmental assessment agreement.

392 (h) Subject to an intergovernmental assessment agreement, a participating local
393 government may charge fees that shall reflect the reasonable costs of the participating local
394 government for its actions under this article and that shall be added to the assessment.

395 (i) Assessments shall not count against the tax limitations contained in paragraph (20) of
396 Code Section 48-5-220 or Code Section 48-5-350.

397 36-62-18.

398 The exercise by a participating local government of the powers granted by this article may
399 be authorized by resolution of the governing body of such participating local government.

400 The resolution shall be adopted by a majority of the members of the governing body
401 present at a meeting of such governing body, which resolution may be adopted at the
402 meeting at which such resolution is introduced. Such a resolution or resolutions shall take
403 effect immediately and need not be laid over or published or posted."

404

SECTION 6.

405 This Act shall become effective upon its approval by the Governor or upon its becoming law
406 without such approval.

407

SECTION 7.

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