# Public-Private Partnerships: The Tax Aspects of Government Building Public-Private Facility Partnerships

*By Charles R. Goulding, Jennifer Pariante and Andrea Albanese*

Charles Goulding, Jennifer Pariante and Andrea Albanese discuss how municipal governments can partner with private industry to build, retrofit and maintain their facilities, thus creating projects and jobs in the private sector and taking advantage of tax deductions available under Code Sec. 179D.

Many municipalities are in dire financial straits and do not have the budget capacity to maintain their physical facilities. Likewise, the building construction and retrofit industry needs projects and jobs. Simultaneously, the financial industry sector is seeking new investments that have better economic returns. The convergence of all these needs and opportunities is increasingly resulting in solutions involving Public-Private Partnerships (PPPs). As a result of the Energy Policy Act, the construction and retrofit industry is much more familiar with and supportive of government building energy reduction-related tax incentives.



## Code Sec. 179D EPAct Tax Opportunities

Pursuant to Code Sec. 179D, as enacted by the Energy Policy Act of 2005 (EPAct),[1] commercial property owners or primary designers in government projects making qualifying energy-reducing investments in their new or existing locations can obtain immediate tax deductions of up to $1.80 per square foot.

If the building project does not qualify for the maximum $1.80-per-square-foot immediate tax deduction, there are tax deductions of up to $0.60 per square foot for each of the three major building subsystems: lighting; heating, ventilating, and air conditioning (HVAC); and the building envelope. The building envelope is every item on the building's exterior perimeter that touches the outside world including roof, walls, insulation, doors, windows and foundation.

## The Tax Opportunity

The Code Sec. 179D government building designer incentive has been a resounding success.[2] On September 21, 2012, Senators Snowe, Cardin, Bingham and Feinstein introduced a proposal to extend the current law and also include an additional "deep retrofit" provision. The tax benefits for Code Sec. 179D would increase from $1.80 to $3.00 per sq. ft. and the deep retrofit provision, proposed Code Sec. 179F, would provide up to $4.00 per sq. ft.

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## Public-Private Partnerships Defined

A PPP is an agreement/contract between a public agency and a private entity. This agreement involves shared resources, risks and benefits involved while providing a service or facility to the public.[3]

## Public-Private Partnership Examples

PPPs have been utilized for many years, typically for bridge building and other major infrastructure projects.

### Yonkers

A September 6, 2012, WALL STREET JOURNAL article described efforts by Yonkers, New York, to raise $1.7 billion to repair the city's public school systems. Yonkers is seeking investors to pay for improvements and maintenance over 30 years. The article indicates that many of the municipalities, including the Maryland Public School Constitution Authority, are closely watching the Yonkers initiative.

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**Table 1. High School Example at 300,000 square feet**

| Provision | Rate per sq. ft. | Tax Deduction |
|---|---|---|
| Current Code Sec. 179D | 300,000 x $1.80 | $540,000 |
| Proposed Extension | 300,000 x $3.00 | $900,000 |
| Proposed Code Sec. 179F | 300,000 x $4.00 | $1,200,000 |



### Chicago's $7.2 Billion Building Program

Chicago Mayor Rahm Emanuel has announced a major $7.2 billion infrastructure improvement and municipal building energy reduction initiative. The City of Chicago is commencing a project to retrofit their buildings and infrastructure through the creation of the Chicago Initiative Trust. This project allows the city to raise both public and private capital funding of about $1.7 billion without dipping into tax revenue. The entire project, called "Building a New Chicago," will cost about $7.2 billion and attempts to fix a large portion of Chicago's aging infrastructure, ranging from sewers to roads to airports. More specifically,

- More than 100 Chicago Transit Authority stations, Chicago's rail system, will be repaired.
- $1.1 billion will be spent on the infrastructure educational improvements.
- $1.4 billion will be spent improving Chicago's O'Hare International Airport. Airports are of particular interest due to their ability to create a local economy around the airport itself.[4]
- In addition, $250 million has been already allocated to "Retrofit Chicago," with the goal of transforming the Chicago-owned buildings into energy-efficient models for other municipalities in the United States to follow.[5]

### Non-U.S. PPP Expertise

Large multinational construction companies headquartered in Europe and Australia have much more experience with public-private partnerships and have purchased major U.S. construction and engineering firms to pursue U.S. PPP projects. Leading non-U.S. companies already familiar with this process include Lend Lease Corporation of Australia, Balfour Beatty of the U.K. and Ferrovial and ACS Group of Spain. These companies need large projects to sustain growth; new U.S. PPP opportunities are tailor made for them.

## The Current State of Affairs

### Municipal Financial Environment

Municipal finance has been damaged from declining revenues related to the subprime crisis and escalating costs related to employee benefits, particularly retiree benefits.

### Municipal Bankruptcies

Recently, multiple major municipalities have actually gone bankrupt including Birmingham, Alabama, Central Falls, Rhode Island and Stockton, California. A September 21, 2012, New York Times article stated that California's state debt may be higher than previously estimated and may range from $167 billion to

$335 billion.[6] This means that private investors must manage risk in public-private partnerships.

### Construction Industry Employment

A large portion of U.S.-sustained, high unemployment rates relates to unemployed construction workers. During the economic recession, new commercial construction has come to a screeching halt. Municipal facility renovations require large numbers of electricians, HVAC mechanics, carpenter, roofers and other construction trades.

### Financial Industry

The financial industry is adversely impacted by a sustained low-interest environment. Commercial banks, insurance companies and even hedge funds are recognizing the above-average economic returns potentially available from energy-efficient retrofits.

## Conclusion

Strong common interests can result in excellent partnerships. Increasingly public building owners, the retrofit community and the financial industry have some common needs. Private partnerships can be challenging business transactions, and public-private partnerships can be even more challenging since the government mission involves more than profit making. The large tax incentives potentially available with these projects can help mitigate the core profit/nonprofit organizational mission differences.

### Endnotes


1 Energy Policy Act of 2005 (P.L. 109-58) ("EPAct").

2 Charles R. Goulding, Charles G. Goulding, & Jacob Goldman. *Strategic Thinking: Seven Years of Code Sec. 179D EPAct*. Corp. Bus. Tax'n Monthly, Sep. 2012

3 The National Council for Public-Private Partnerships, *How PPPs Work*. Accessed at: *http://www.ncppp.org/howpart/index.shtml*.

4 Charles R. Goulding and Charles G. Goulding, *The EPAct Tax Aspects of the Aerotropolis*, Mar. 2011, available online at *www.energytaxsavers.com/ArticlesDate.php*.

5 Charles R. Goulding, Charles G. Goulding and Gary Savell, *Energy Tax Aspects of Chicago's 7.2 Billion Dollar Building Program*, Corp. Bus. Tax'n Monthly, Jan. 2013, at 11.

6 Mary Williams Walsh, *California Debt Higher Than Earlier Estimates, a Task Force Reports*, The New York Times, Sep. 21, 2012, at A18.