# Purchase of Agricultural Conservation Easements

## What Are PACE Programs?

Purchase of agricultural conservation easement (PACE) programs (also known as purchase of development rights or PDR programs) compensate property owners for keeping their land available for agriculture. Typically, PACE programs consider soil quality, threat of development and future agricultural viability when selecting farms for protection. They are usually administered by state or local governments but may also be operated by private conservation organizations.

## Rights and Restrictions

PACE programs buy agricultural conservation easements (ACEs) from participating landowners. ACEs are deed restrictions that protect agricultural resources and prohibit activities that could interfere with farming and ranching. ACEs permit agriculture and typically allow farm structures. Most do not restrict farming practices but may require implementation of a conservation plan. Landowners retain all other rights, including the right to limit public access, sell, rent or bequeath the land. Easements "run with the land," binding all future owners.

## Compensation

Programs generally pay landowners the difference between the value of the land as restricted and the value of the land for its "highest and best use," which may be residential or commercial development. The easement price is established by appraisals or a local easement valuation point system.

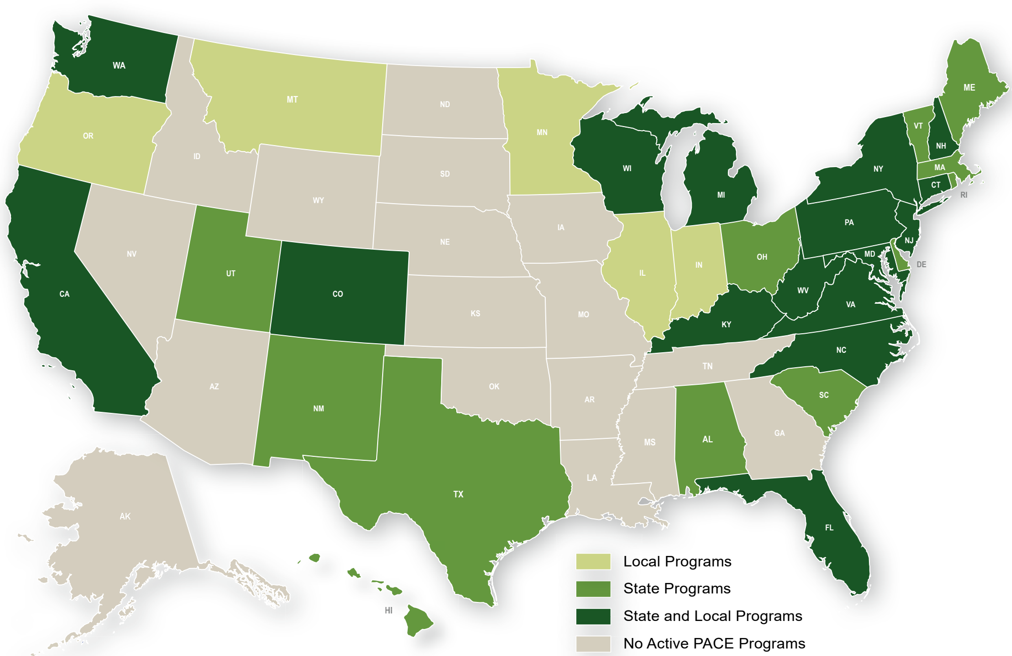
## Tax Considerations

An easement is a capital asset—property expected to increase in value over time. Therefore, the sale of an easement may be subject to federal and state capital gains taxes. Landowners have used the like-kind exchange provision in the federal tax code to defer capital gains taxes, applying proceeds from the sale of an easement to acquire additional land.

Landowners who sell agricultural conservation easements for less than their full appraised value—bargain sales—may qualify for tax incentives. Landowners can deduct the value of donations that meet Internal Revenue Code section 170(h) criteria up to 50 percent of their adjusted gross income (AGI) in the year of the gift. Corporations are limited to a 10 percent deduction. Donors can apply any excess easement donation value toward federal income taxes for the next 15 years, subject to the same percentage limitations. "Qualified farmers and ranchers"—defined as individuals or corporations who earn more than 50 percent of their gross income from farming in the taxable year in which the gift is made—can deduct the value of the agricultural conservation easement on property used in agriculture or livestock production up to 100 percent of their AGI with a 15-year carryover.

In addition to the federal income tax incentives, most state income tax laws provide for charitable deductions of conservation easements. At least 14 states offer income tax credits for easement donations on agricultural land. Florida exempts up to 100 percent of state property taxes on permanently protected land.

## PACE Programs as of 2020

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Tax codes in some states direct local tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers property taxes on restricted parcels if the land is not already enrolled in a differential assessment program, which directs local tax assessors to assess farm and ranch land at its value for agriculture, rather than for residential, commercial or industrial development. Local units of government also may have the authority to provide additional tax incentives. Pennsylvania school districts, for instance, are able to exempt protected farm parcels from future millage rate increases; some Maryland counties offer property tax credits for permanently protected farms.

The sale or donation or of an agricultural conservation easement usually reduces the value of land for estate tax purposes. To the extent that the restricted value is lower than fair market value, the estate will be subject to a lower tax. In some cases, an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability.

## History

Suffolk County, New York, created the nation's first PACE program in 1974. Following Suffolk County's lead, Maryland and Massachusetts authorized PACE programs in 1977, Connecticut in 1978 and New Hampshire in 1979. Concern about regional food security and the loss of open space were motivating forces behind these early PACE programs. The number of state-level programs continued to grow during the 1980s with the addition of Rhode Island in 1981, New Jersey in 1983, Vermont in 1987 and Pennsylvania in 1988.

The creation in 1996 of a federal farmland protection program, which provided matching funds to tribal, state and local governments to buy easements on agricultural land, spurred additional activity. The Agricultural Land Easements component of the federal Agricultural Conservation Easement Program continues to encourage state and local efforts.
As of January 2020, 28 states currently have state-level PACE programs. Of these, 16 also have local PACE programs. Five additional states (Illinois, Indiana, Minnesota, Montana, and Oregon) only have PACE programs at the local level. In 2017, Oregon authorized a state-level program but has not yet funded any acquisitions. Georgia and Missouri have authorized PACE but do not yet have programs. Montana's state program expired in 2003 and is not an active program.

## Functions and Purposes

PACE compensates landowners for permanently limiting nonagricultural land uses. Selling an easement allows farmers to cash in a percentage of the equity in their land, thus creating a financially competitive alternative to development. Permanent easements prevent development that would effectively foreclose the possibility of farming. Because non-agricultural development on one farm can cause problems for neighboring agricultural operations, PACE may help protect their economic viability as well.

Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. The reduction in market value may also reduce property taxes.

PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land. For example, the proceeds from selling agricultural conservation easements may be used to reduce debt, expand or modernize farm operations, invest for retirement or settle estates. The reinvestment of PACE funds in equipment, livestock and other farm inputs may also stimulate local agricultural economies.

Lastly, PACE gives communities a way to share the costs of protecting farmland with landowners. Non-farmers have a stake in the future of agriculture for a variety of reasons, including keeping land available for local food production and maintaining scenic and historic landscapes, open space, watersheds and wildlife habitat. PACE allows them to "buy into" the protection of farming and be assured that they are receiving something of lasting value.



For more information see the resources about PACE programs and policies on the Farmland Information Center (FIC) website. The FIC is a clearinghouse for information about farmland protection and stewardship and is a public/private partnership between the USDA Natural Resources Conservation Service and American Farmland Trust.