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SENATE BILL DRS45196-LMf-13C

Short Title: C-PACE Program.

(Public)

Sponsors: Senators Johnson, Lazzara, and Woodard (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ADVANCE BUILDING RESILIENCY AND UTILITY EFFICIENCY IN
3 NORTH CAROLINA BY AUTHORIZING A STATEWIDE PROGRAM TO UTILIZE
4 ASSESSMENTS TO REPAY NONPUBLIC FINANCING OF COMMERCIAL
5 BUILDING IMPROVEMENTS THAT WILL PROMOTE ECONOMIC DEVELOPMENT,
6 REDUCE UTILITY BILL COSTS, AND HARDEN COMMERCIAL BUILDINGS
7 AGAINST STORM AND FLOOD DAMAGE.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Chapter 160A of the General Statutes is amended by adding a new
10 Article to read as follows:

11 "Article 10B.

12 "Commercial Property Assessed Capital Expenditure and Resilience Act (C-PACE).

13 "**§ 160A-239.11. Purpose; findings.**

14 This Article shall be known and may be cited as the "Commercial Property Assessed Capital
15 Expenditure and Resilience Act (C-PACE)." This Article authorizes the establishment of a
16 statewide commercial property assessed clean energy program that local governments may
17 voluntarily join to allow free and willing owners of commercial, industrial, agricultural,
18 nonprofit, and multifamily residential properties with five or more dwelling units to obtain
19 low-cost, long-term financing for qualifying improvements, including energy efficiency, water
20 conservation, renewable energy, and resilience projects, secured by an assessment and lien
21 authorized by this Article. The State finds that a valid public purpose exists because the use of a
22 commercial property assessed clean energy program creates an additional financing mechanism
23 for property owners to use private funds to finance renewable energy, energy efficiency, and
24 resilience improvements to their eligible property, thereby driving economic development by
25 creating a diversity of jobs in the clean energy and resilience sectors of the economy. The
26 assessment requires minimal upfront costs and provides a more accessible financial mechanism
27 to fund improvements that will increase the tax value of the affected properties. C-PACE
28 improvements allow property owners to save on their utility bills because the improvements lead
29 to energy or utility savings. C-PACE improvements will result in improved indoor air quality or
30 increased resilience.

31 "**§ 160A-239.12. Definitions.**

32 The following definitions apply in this Article:

33 (1) Administrator. – The person or agency selected by the North Carolina State
34 Energy Office to administer the C-PACE program as provided in this Article.



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- 1 (2) Capital provider. – A private entity, or the private entity's designee, successor,
2 and assigns, that makes or funds C-PACE financing improvements under this
3 Article.
- 4 (3) Commercial property. – Privately owned commercial, industrial, or
5 agricultural real property or privately owned residential real property
6 consisting of five or more dwelling units. This term includes property owned
7 by nonprofit, charitable, or religious organizations.
- 8 (4) Commercial property assessed capital expenditure program (C-PACE). – An
9 assessment voluntarily imposed on an eligible property owner to pay for the
10 costs of eligible qualified improvements.
- 11 (5) Financing agreement. – The contract in which a property owner agrees to
12 repay a capital provider for the C-PACE financing provided including, but not
13 limited to, the details of any finance charges, fees, debt servicing, accrual of
14 interest and penalties, and any terms relating to the treatment of prepayment
15 and partial payment, billing, collection, and enforcement of the C-PACE
16 financing.
- 17 (6) Local government. – Any county, city, or public authority.
- 18 (7) C-PACE Toolkit. – A comprehensive document developed by the statewide
19 administrator that describes the C-PACE program and establishes any
20 appropriate guidelines, specifications, underwriting, and approval criteria, and
21 any other application forms consistent with the administration of the program
22 and not otherwise provided for in this Article.
- 23 (8) Project application. – The application submitted to the C-PACE program to
24 demonstrate that a proposed project qualifies for financing and an assessment
25 and lien under this Article.
- 26 (9) Property owner. – The owner or owners of a commercial property whose
27 names are listed on the property title, duly recorded in the appropriate office
28 of the register of deeds.
- 29 (10) Qualified improvement. – A permanent improvement that is affixed to a
30 qualified project and includes one or more of the following approved by the
31 statewide administrator:
- 32 a. Energy efficiency measure. – An equipment, physical, or program
33 change implemented that results in less energy used to perform the
34 same function. For purposes of this sub-subdivision, the term "energy
35 efficiency measure" includes, but is not limited to, energy produced
36 from a combined heat and power system that uses nonrenewable
37 energy resources. The term does not include demand-side
38 management.
- 39 b. Increase resilience. – Includes, but is not limited to, storm retrofits,
40 flood mitigation, stormwater management, wind resistance, energy
41 storage, and microgrids, and other resilience projects.
- 42 c. Renewable energy resource. – (i) A solar vehicle, solar thermal, wind,
43 hydropower, geothermal, electric vehicle charging station, or ocean
44 current or wave energy resource, (ii) a biomass resource, including
45 agricultural waste, animal waste, wood waste, spent pulping liquors,
46 combustible residues, combustible liquids, combustible gases, energy
47 crops, or landfill methane, (iii) waste heat derived from a renewable
48 energy resource and used to produce electricity or useful, measurable
49 thermal energy at a retail electric customer's facility, or (iv) hydrogen
50 derived from a renewable energy resource. For purposes of this

1 sub-subdivision, the term "renewable energy resource" does not
2 include peat, a fossil fuel, or a nuclear energy resource.

3 d. Water conservation measure. – To decrease water consumption or
4 demand or to address safe drinking water through the use of efficiency
5 technologies, products, or activities that reduce or support the
6 reduction of water consumption, allow for the reduction in demand, or
7 reduce or eliminate lead from water which may be used for drinking
8 or cooking.

9 (11) Qualified project. – A project approved by the statewide administrator which
10 involves the installation or modification of a qualified improvement,
11 including:

12 a. New and existing commercial properties.

13 b. New and existing multifamily properties of five or more units per
14 dwelling.

15 c. New and existing nonprofit properties.

16 d. New and existing industrial properties.

17 e. New and existing agricultural properties.

18 (12) Program Sponsor. – The North Carolina State Energy Office, which shall be
19 responsible for developing a process for selecting a statewide administrator
20 and for oversight of the C-PACE program.

21 **"§ 160A-239.13. Statewide C-PACE Program – authorization.**

22 (a) The C-PACE program is a statewide program in which any local government may
23 participate by allowing direct financing between private capital providers and property owners
24 within its jurisdictional boundaries as the means to finance qualified projects. The direct
25 financing shall be secured by placing a voluntary assessment and lien on the property, which
26 shall be duly recorded in the office of the register of deeds in the county where the property is
27 located.

28 (b) The North Carolina State Energy Office (hereinafter "Office") is hereby authorized
29 to serve as the program administrator, and in that capacity shall be responsible for overseeing the
30 C-PACE program. The Office shall develop a process for selecting a third-party program
31 administrator who shall be responsible for accepting and approving applications for C-PACE
32 financing and developing and promoting the program.

33 **"§ 160A-239.14. Statewide C-PACE program – administration.**

34 In the administration of the C-PACE program, the administrator shall do the following:

35 (1) Prepare a Program Toolkit prior to accepting applications for C-PACE
36 financing.

37 (2) Prepare the following C-PACE documents, which shall be known as the
38 "documentation set":

39 a. An assessment contract to be used by the program and property owner
40 specifying the terms of the voluntary assessment to be recorded on the
41 property.

42 b. A notice of assessment and C-PACE lien.

43 c. An assignment of notice of assessment and C-PACE lien between the
44 local government and capital provider.

45 d. A consent form for the C-PACE assessment by the holder of the
46 mortgage or deed of trust.

47 (3) Impose fees to offset the actual and reasonable costs of administering the
48 C-PACE program, including:

49 a. An application fee not to exceed one hundred fifty dollars (\$150.00).

50 b. A processing fee assessed to the property owner whose application for
51 C-PACE financing is approved, which shall be one percent (1%) of

- 1 the total amount financed, but shall not be more than fifteen thousand
2 dollars (\$15,000).
- 3 (4) Prescribe the form and manner of the application for financing, and establish
4 the process for reviewing and evaluating applications. The following shall be
5 provided or demonstrated:
- 6 a. For an existing building: (i) where renewable energy, energy
7 efficiency, or water conservation improvements are proposed, an
8 energy analysis by a licensed engineering firm or engineer or another
9 qualified professional listed in the Program Toolkit stating that the
10 proposed qualified improvements will result in more efficient use or
11 conservation of energy or water, the reduction of greenhouse gas
12 emissions, or the addition of renewable sources of energy or water, or
13 (ii) where resilience improvements are proposed, certification by a
14 licensed engineer stating that the qualified improvements will result in
15 improved resilience.
- 16 b. For new construction, certification by a licensed engineering firm or
17 engineer stating that the proposed qualified improvements will allow
18 the project to meet the requirements of the current State building code.
- 19 c. A qualified capital provider may certify to the program, in accordance
20 with a process approved by the program, that the property owner and
21 the project qualifies for financing under this Article, complies with the
22 provisions of this Article, and complies with the Program Toolkit.
- 23 d. Upon approval by the program, the program shall finalize the C-PACE
24 documentation set and the local government shall execute the C-PACE
25 assessment and lien with no faith or liability towards the debt. The
26 program administrator shall be responsible for recording the
27 documents, as prescribed in the Program Toolkit, in the county in
28 which the property is located.
- 29 e. The capital provider shall be solely responsible for all billing,
30 collection, and enforcement of the special assessment and lien. Under
31 this Article, delinquent installments shall incur interest and penalties
32 as specified in the financing agreement between the property owner
33 and capital provider. Enforcement of a delinquent installment shall be
34 in the manner of a deed of trust under Article 2A of Chapter 45 of the
35 General Statutes, except that assessments not yet due may not be
36 accelerated or eliminated by foreclosure of the past due amounts of the
37 lien. Any outstanding and delinquent State, local, and federal property
38 taxes or liens at the time of the enforcement action shall be satisfied
39 first.
- 40 f. If enforcement action is taken against property on which there is a
41 C-PACE lien placed by the capital provider or third-party
42 administrator, foreclosure shall follow the same process as provided in
43 Article 2A of Chapter 45 of the General Statutes. Any outstanding and
44 delinquent State, local, and federal property taxes or liens at the time
45 of the enforcement action shall be satisfied first, and the C-PACE lien
46 shall be superior to all other liens on the property from the date on
47 which notice of the C-PACE lien is recorded until the lien, interest,
48 penalties, and charges accrued or accruing are paid; provided that the
49 mortgage holder consent is obtained from existing mortgage holders
50 on the property as provided in this Article.

- 1 (5) Require any commercial property owner seeking C-PACE financing to certify
2 that the applicant:
3 a. Is the legal owner of the benefited property, of which the title is not in
4 dispute.
5 b. Is current on all mortgage payments and property taxes.
6 c. Is not insolvent or in bankruptcy proceedings.
7 (6) Record the C-PACE documentation set executed by the local government in
8 the office of the register of deeds in the county in which the approved property
9 is located. The administrator may delegate recording duties to the property
10 owner and the capital provider.

11 **"§ 160A-239.15. Local government participation.**

12 (a) A local government seeking to participate in the C-PACE program shall adopt a
13 resolution which shall include all of the following:

- 14 (1) A grant of authorization for the C-PACE program to operate within its
15 jurisdictional boundaries and to offer C-PACE financing to willing and
16 qualified property owners.
17 (2) The local government's intent to participate in the program and to execute and
18 place voluntary C-PACE assessments and liens on properties in its
19 jurisdictional boundaries to allow eligible and voluntary property owners to
20 repay to private capital providers the financing for available qualified projects.
21 (3) A statement that the local government intends to (i) authorize direct financing
22 between property owners and capital providers as the means to finance
23 qualified projects and (ii) delegate billing, collection, and enforcement duties
24 for the assessment and lien to capital providers.
25 (4) A statement identifying the local government department or employee that
26 will, upon receipt of an approved application for C-PACE financing within its
27 jurisdictional boundaries from the administrator, execute the C-PACE
28 documentation set.
29 (5) A statement that the local government shall be reimbursed by the
30 administrator or applicant for the costs associated with the performance of the
31 activities described in subdivision (4) of this section.
32 (6) A description of the boundaries of the region where property owners are
33 eligible.
34 (7) A statement of the time and place for a public hearing on the proposed
35 program.

36 (b) The governing body of the local government may, after conducting a public hearing
37 on the proposed program, adopt a resolution providing that the local government is joining the
38 C-PACE program.

39 **"§ 160A-239.16. Immunity and foreclosure process**

40 An assessment under this Article and the terms and conditions of the assessment shall be
41 voluntarily agreed upon between the property owner, private capital provider, and administrator.
42 Upon agreement of the terms, the local government shall consent to execute and place the
43 assessment and lien on the property. Neither the State nor any participating local government, its
44 officers, and employees shall be liable for any actions taken pursuant to this section. A local
45 government shall not be responsible for any foreclosure duties related to the assessment on a
46 property with eligible improvements. Foreclosure due to payments associated with the C-PACE
47 assessment shall be the sole responsibility of the private capital provider or third-party
48 administrator. If a foreclosure proceeding is undertaken involving property on which the
49 C-PACE lien has been placed by a capital provider or third-party administrator, the proceeding
50 shall be conducted as provided in Article 2A of Chapter 45 of the General Statutes. Any
51 outstanding or delinquent State, local, or federal taxes or liens at the time of the foreclosure

1 proceeding shall be satisfied first, but the C-PACE lien shall be superior to all other liens on the
2 property from the date on which the notice of the C-PACE lien was recorded until the C-PACE
3 lien, interest, penalties, and charges accrued or accruing are paid; provided that the mortgage
4 holder consent is obtained from existing mortgage holders on the property as described in
5 G.S. 160A-239.15.

6 **"§ 160A-239.17. C-PACE assessment and lien.**

7 The following shall apply to the C-PACE assessment and lien:

- 8 (1) The lien shall be inferior to all prior and subsequent State, local, and federal
9 taxes or liens and superior to all other liens on the property from the date on
10 which the notice of the C-PACE lien is recorded until the C-PACE lien,
11 interest, penalties, and charges accrued or accruing are paid.
- 12 (2) The lien shall run with the land upon the sale or foreclosure of the property,
13 and that portion of the assessment under the assessment contract that is not yet
14 due may not be accelerated or eliminated by foreclosure of a property tax lien.
- 15 (3) A provision of a deed of trust, mortgage, or any other agreement between a
16 lienholder and a property owner providing for the acceleration of any payment
17 under a deed of trust, mortgage, or agreement solely as the result of entering
18 into an agreement to finance an assessment is not enforceable; provided,
19 however, a mortgage holder or loan servicer may increase the monthly amount
20 held in escrow as may be required to annually pay the assessment.
- 21 (4) After the notice of special assessment is recorded, as provided in this Article,
22 the lien may not be contested on the basis that the improvement is not a
23 qualified improvement or the project is not a qualified project or for any
24 procedural or substantive irregularities related to the financing.

25 **"§ 160A-239.18. Financing.**

26 (a) The financing for assessments imposed under this Article may include, but is not
27 limited to:

- 28 (1) The cost of materials and labor necessary for the installation or modification
29 of a qualified improvement.
- 30 (2) Permit fees.
- 31 (3) Inspection fees.
- 32 (4) Lender fees.
- 33 (5) Program application and administrative fees.
- 34 (6) Project development and engineering fees.
- 35 (7) Interest reserves.
- 36 (8) Capitalized interest, in an amount determined by the owner of the commercial
37 property and the third-party providing financing under this Article.
- 38 (9) Any other fees or costs incurred by the property owner incident to the
39 installation, modification, or improvement on a specific or pro rata basis, as
40 determined by the local government.

41 (b) The term of the financing may not exceed the useful life of an improvement or the
42 weighted average useful life of improvements where multiple improvements are approved.

43 (c) The financing agreement between the capital provider and the property owner shall
44 be negotiated by the parties, including all terms and conditions of repayment, including interest,
45 penalties, and prepayment.

46 (d) The capital provider shall be solely responsible for all billing, collection, and
47 enforcement of the assessment and lien. Delinquent installments shall incur interest and penalties
48 as specified in the financing agreement. Enforcement of a delinquent installment shall be in the
49 manner of a deed of trust under Article 2A of Chapter 45 of the General Statutes, except that
50 assessments that are not due may not be accelerated or eliminated by foreclosure of the past due
51 amounts of the lien. Any outstanding and delinquent State, local, and federal property taxes or

1 liens at the time of the enforcement action shall be satisfied first, and the C-PACE lien shall be
2 superior to all other liens on the property from the date on which the notice of the C-PACE lien
3 is recorded until the C-PACE lien, interest, penalties, and charges accrued or accruing are paid;
4 provided the mortgage holder's consent is obtained from existing mortgage holders on the
5 property as provided in this Article.

6 **"§ 160A-239.19. Lender consent.**

7 Prior to entering into an assessment contract, the property owner must submit to the
8 administrator a written statement, executed by each holder of the mortgage or deed of trust on
9 the property securing indebtedness, that consents to the assessment and indicates that the
10 assessment does not constitute an event of default under the terms of the mortgage or deed of
11 trust.

12 **"§ 160A-239.20. Prohibition on use of public funds.**

13 A local government may not enforce any privately financed debt under this Article. Neither
14 the State nor any local government may use public funds to fund or repay any loan between a
15 capital provider and property owner. Nothing in this Article shall be interpreted as authorizing a
16 local government to pledge, offer, or encumber its full faith, and no local government shall
17 pledge, offer, or encumber its full faith and credit under this Article.

18 **"§ 160A-239.21. Purchases and contracts.**

19 The proposed arrangements for financing a qualified project may authorize the property
20 owner to do any of the following:

- 21 (1) Directly purchase the related equipment and materials for the installation or
22 modification of a qualified improvement.
- 23 (2) Contract directly, including through lease, power purchase agreement, or
24 other service contract, for the related equipment and materials used in the
25 installation or modification of a qualified improvement.

26 **"§ 160A-239.22. Participation not compulsory.**

27 A local government that participates in the C-PACE program shall not do either of the
28 following:

- 29 (1) Make the issuance of any permit, license, or other authorization by the local
30 government conditional upon the person entering into a written contract to
31 repay the financing of a qualified project through special assessments under
32 this Article.
- 33 (2) Otherwise compel a person who owns property within the local government's
34 jurisdictional boundaries to enter into a written contract to repay the financing
35 of a qualified project through special assessments.

36 **"§ 160A-239.23. Severability.**

37 If any provision of this Article or its application to any person or circumstance is held invalid,
38 then the invalidity shall not affect other provisions or applications of the Article that can be given
39 effect without the invalid provision or application, and to that end the provisions of this Article
40 shall be severable."

41 **SECTION 2.** This act becomes effective July 1, 2021.