

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 802
Commerce and Insurance Committee Substitute Adopted 5/28/24
PROPOSED COMMITTEE SUBSTITUTE S802-PCS45469-TG-47

Short Title: C-PACE Program.

(Public)

Sponsors:

Referred to:

May 6, 2024

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 AND TO AMEND ARTICLE 8 OF
8 CHAPTER 143 OF THE GENERAL STATUTES TO MODIFY THE REQUIREMENTS
9 TO BE CERTIFIED AS A MINORITY BUSINESS OR HISTORICALLY
10 UNDERUTILIZED BUSINESS.

11 The General Assembly of North Carolina enacts:

12 SECTION 1. Chapter 160A of the General Statutes is amended by adding a new
13 Article to read:

14 "Article 10B.

15 "Commercial Property Assessed Capital Expenditure (C-PACE) Act.

16 "§ 160A-239.11. Purpose; findings.

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

34 "§ 160A-239.12. Definitions.

35 The following definitions apply in this Article:



* S 8 0 2 - P C S 4 5 4 6 9 - T G - 4 7 *

- 1 (1) Capital provider. – A private entity, or the private entity's designee, successor,
2 and assigns, that makes or funds qualifying improvements under this Article.
- 3 (2) Commercial property assessed capital expenditure program (C-PACE
4 Program). – A program wherein a C-PACE assessment and C-PACE lien are
5 voluntarily imposed by a local government on qualifying commercial property
6 to pay for the costs of qualifying improvements.
- 7 (3) C-PACE assessment. – A voluntary assessment imposed on a commercial
8 property by a local government under this Article pursuant to an assessment
9 agreement for the total amount of the C-PACE financing. The voluntary
10 C-PACE assessment shall not constitute a tax.
- 11 (4) C-PACE financing. – Direct financing between capital providers and property
12 owners within the jurisdictional boundaries of a local government
13 participating in the C-PACE Program to finance qualifying improvements.
- 14 (5) C-PACE lien. – A lien to secure the C-PACE assessment that remains on the
15 qualifying property until paid in full.
- 16 (6) C-PACE toolkit. – A comprehensive set of documents developed by the
17 statewide administrator in consultation with stakeholders and local
18 governments and subject to approval by the program sponsor that describes
19 the C-PACE Program guidelines, application approval criteria, and forms
20 consistent with the administration of the program as provided for in this
21 Article.
- 22 (7) Financing agreement. – The contract in which a property owner agrees to
23 repay a capital provider for the C-PACE financing provided, including, but
24 not limited to, any finance charges, fees, debt servicing, accrual of interest and
25 penalties, and any terms relating to the treatment of prepayment and partial
26 payment, and the billing, collection, and enforcement of the C-PACE
27 financing.
- 28 (8) Local government. – Any county or city.
- 29 (9) Program sponsor. – The North Carolina Department of Commerce.
- 30 (10) Project application. – The application submitted to the statewide administrator
31 by the property owner to demonstrate that a proposed project qualifies for
32 C-PACE financing under this Article.
- 33 (11) Property owner. – The holder of title in fee simple to a qualifying commercial
34 property.
- 35 (12) Publicly-owned land. – Property that is owned by a State or local
36 governmental entity and that is subject to a leasehold.
- 37 (13) Qualifying commercial property. – Privately owned commercial, industrial,
38 or agricultural real property or privately owned residential real property
39 consisting of five or more dwelling units. This term includes property owned
40 by nonprofit, charitable, or religious organizations.
- 41 (14) Qualifying improvement. – A permanently affixed improvement to a building
42 on a qualifying commercial property as part of the construction or renovation
43 of the qualifying property and that includes one or more of the following
44 approved by the program sponsor:
- 45 a. Energy efficiency measure. – An equipment, physical component, or
46 program change implemented that results in less energy used to
47 perform the same function and that meets or exceeds then-existing
48 State and federal building codes and efficiency standards or
49 conservation codes, including, but not limited to, energy produced
50 from a combined heat and power system that uses nonrenewable
51 energy resources.

- 1 b. Resiliency measure. – An equipment, physical component, or program
2 change implemented that includes, but is not limited to, storm retrofits,
3 flood mitigation, stormwater management, wind resistance, indoor air
4 quality improvement, electric vehicle charging station, backup energy
5 generators enrolled in an electric public utility demand response
6 program, energy storage, and microgrids and other resilience projects.
7 c. Renewable energy measure. – A renewable energy resource as defined
8 in G.S. 62-133.8.
9 d. Water conservation measure. – An equipment, physical component, or
10 program change implemented to decrease water consumption or
11 demand or to address safe drinking water.

12 (15) Statewide administrator. – The Economic Development Partnership of North
13 Carolina.

14 **"§ 160A-239.13. Statewide C-PACE Program – authorization.**

15 (a) The State authorizes a statewide C-PACE Program in which any local government
16 may participate.

17 (b) The program sponsor is hereby authorized under this Article to oversee the C-PACE
18 Program.

19 **"§ 160A-239.14. Statewide C-PACE Program – administration.**

20 (a) In the administration of the C-PACE Program, the statewide administrator shall do
21 the following:

22 (1) Prepare a C-PACE toolkit in consultation with stakeholders and local
23 governments and subject to approval by the program sponsor prior to
24 accepting applications for C-PACE financing, which shall include, at a
25 minimum, all of the following:

26 a. A form of assessment agreement to be used between a local
27 government and property owner specifying the terms of the C-PACE
28 assessment.

29 b. A form of notice of C-PACE assessment that identifies the qualified
30 commercial property subject to the C-PACE assessment and the
31 property owner consenting to the C-PACE assessment.

32 c. A form of assignment of the C-PACE lien from the local government
33 to the capital provider that cross-references the registry book and page
34 number of the notice C-PACE assessment giving rise to the lien.

35 d. A form of consent to a C-PACE assessment by the holder of a
36 mortgage, deed of trust, or other lien upon the qualifying commercial
37 property.

38 e. A form of project application with checklist requirements and
39 corresponding documentation that will be required by the statewide
40 administrator to approve a project application.

41 (2) Impose fees to offset the actual and reasonable costs of administering the
42 C-PACE Program, including:

43 a. An application fee not to exceed seven hundred fifty dollars (\$750.00).

44 b. A processing fee assessed to the property owner whose application for
45 C-PACE financing is approved, which shall be one percent (1%) of
46 the total amount financed but shall not be more than twenty-five
47 thousand dollars (\$25,000).

48 (3) Establish the process for reviewing and evaluating applications, which shall,
49 at a minimum, require the following to be provided or demonstrated:

50 a. For an existing building: (i) where renewable energy, energy
51 efficiency, or water conservation measures are proposed, an energy

- 1 analysis by a licensed engineering firm or engineer or another
2 qualified professional listed in the C-PACE toolkit stating that the
3 proposed qualifying improvements will result in more efficient use or
4 conservation of energy that meets or exceeds then-existing State and
5 federal building codes and efficiency standards or conservation codes,
6 more efficient use or conservation of water, the reduction of
7 greenhouse gas emissions, or the addition of renewable sources of
8 energy or water or (ii) where resilience measures are proposed,
9 certification by a licensed engineer stating that the qualifying
10 improvements will result in improved resilience.
- 11 b. For construction of a new building, certification by a licensed
12 engineering firm or engineer stating that the proposed qualifying
13 improvements will allow the proposed project to exceed the energy or
14 water efficiency requirements of the current State building code, or in
15 the case of a resiliency measure, achieve compliance with a national
16 model resiliency standard.
- 17 c. For existing or new buildings, certification by a licensed engineering
18 firm or engineer that all available electric public utility energy
19 efficiency and demand response programs available to property
20 owners and any tenants thereof have been evaluated prior to applying
21 for C-PACE financing.
- 22 (4) Accept and approve project applications for C-PACE financing meeting the
23 requirements of subdivision (3) of this subsection.
- 24 (5) Require any property owner applying for C-PACE financing to certify that the
25 applicant:
- 26 a. Is the holder of title in fee simple to the qualifying commercial
27 property and that title to the qualifying commercial property is not in
28 dispute.
- 29 b. Is current on all mortgage payments and property taxes.
- 30 c. Is not insolvent or in bankruptcy proceedings.
- 31 (6) Upon execution by the local government of (i) a C-PACE assessment and (ii)
32 a notice of assignment of C-PACE lien related to an approved project
33 application, record such documents in the office of the register of deeds in the
34 county in which the approved property is located. The statewide administrator
35 may delegate recording duties to the property owner and the capital provider.
- 36 (7) Submit a report to the program sponsor annually.
- 37 (b) The provisions of Chapter 150B of the General Statutes shall not apply to the C-PACE
38 toolkit or any actions of the program sponsor or statewide administrator in the administration of
39 the program.
- 40 **§ 160A-239.15. Local government participation.**
- 41 (a) A local government seeking to participate in the C-PACE Program shall adopt a
42 resolution that includes all of the following:
- 43 (1) A grant of authorization for the C-PACE Program to operate within its
44 jurisdictional boundaries and for the statewide administrator to provide the
45 administrative services described in G.S. 160A-239.14.
- 46 (2) A statement that the local government intends to (i) authorize C-PACE
47 financing, (ii) authorize the imposition of C-PACE assessments on qualifying
48 commercial properties benefitting from qualifying improvements to secure
49 repayment of C-PACE financing, (iii) assign the C-PACE lien to the capital
50 provider providing C-PACE financing, and (iv) delegate billing, collection,

1 and enforcement duties for the C-PACE assessment and C-PACE lien to
2 capital providers.

3 (3) A statement that the amount of a C-PACE financing and related assessment
4 repayment terms shall be pursuant to the related financing agreement.

5 (4) A statement identifying the local government department or employee that
6 shall, upon receipt of an approved project application for C-PACE financing
7 within its jurisdictional boundaries from the statewide administrator, execute
8 the documents included in G.S. 160A-239.14(a)(1)a., b., and c. on behalf of
9 the local government.

10 (5) A statement that the local government shall be reimbursed by the statewide
11 administrator for the actual and reasonable costs associated with the
12 performance of the duties described in subdivision (4) of this subsection.

13 (6) A statement of the time and place for a public hearing on the proposed
14 program.

15 (b) The governing body of the local government may, after conducting a public hearing
16 on the proposed program, adopt a resolution providing that the local government is joining the
17 C-PACE Program. If the local government seeking to participate in the C-PACE Program is a
18 city, the resolution adopted pursuant to this subsection shall be effective only with the
19 concurrence of the governing body of the county in which the city is located.

20 (c) Pursuant to G.S. 160A-239.17(4), no funds for repayment of the voluntary C-PACE
21 assessment should be received by the participating local government. However, if any such funds
22 are received by the participating local government, such funds shall be custodial funds as
23 described in G.S. 159-13(a) for the benefit of the capital provider.

24 **"§ 160A-239.16. Immunity and foreclosure process.**

25 (a) Neither the State nor any participating local government, its officers, or employees
26 shall be liable for any actions taken pursuant to this Article. A local government shall not be
27 financially or legally liable or responsible for any assessment and lien imposed within its
28 jurisdiction under the program.

29 (b) The capital provider shall be solely responsible for all billing, collection, and
30 enforcement of the C-PACE assessment and C-PACE lien.

31 (c) Delinquent C-PACE assessment payments shall incur interest and penalties as
32 specified in the financing agreement and shall accrue to the C-PACE lien.

33 (d) Enforcement of a delinquent C-PACE assessment payment by the capital provider
34 shall be in the manner of the foreclosure of a deed of trust as provided in Article 2A of Chapter
35 45 of the General Statutes, except that C-PACE assessment payments not yet billed or due may
36 not be accelerated or extinguished by foreclosure of the delinquent assessment payment or
37 payments. Any outstanding or delinquent State, local, or federal taxes or liens at the time of the
38 foreclosure proceeding shall be satisfied first, but the C-PACE lien shall be superior to all other
39 liens on the property from the date on which the notice of the C-PACE assessment was recorded
40 until the C-PACE assessment, interest, penalties, and charges accrued or accruing are paid.

41 **"§ 160A-239.17. C-PACE assessment and lien.**

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

43 (1) The lien shall be inferior to all prior and subsequent State, local, and federal
44 taxes or liens and superior to all other liens on the property from the date on
45 which the notice of the C-PACE assessment is recorded until the C-PACE
46 assessment, interest, penalties, and charges accrued or accruing are paid.

47 (2) The lien shall run with the land, and that portion of the C-PACE assessment
48 that is not yet due may not be accelerated or eliminated by foreclosure of a
49 property tax or other lien.

1 (3) The C-PACE lien may not be contested on the basis that the improvement is
2 not a qualified improvement or for any procedural or substantive irregularities
3 related to the financing.

4 (4) For C-PACE assessments for leaseholds, the C-PACE assessment may be
5 levied on the leasehold or possessory interest, including on publicly-owned
6 land, subject to the consent of the entity owning the property and shall be
7 payable by the owner of the leasehold interest.

8 **"§ 160A-239.18. Financing.**

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

11 (1) The cost of materials and labor necessary for the installation or modification
12 of a qualified improvement.

13 (2) Permit fees.

14 (3) Inspection fees.

15 (4) Financing fees.

16 (5) Application and administrative fees.

17 (6) Project development and engineering fees.

18 (7) Interest reserves.

19 (8) Capitalized interest, in an amount determined by the owner of the commercial
20 property and the capital provider.

21 (9) Any other fees or costs incurred by the property owner incident to the
22 installation, modification, or improvement on a specific or pro rata basis, as
23 determined by the local government.

24 (b) The term of the C-PACE financing may not exceed the weighted average useful life
25 of qualifying improvements.

26 (c) The total amount for financing of the qualifying improvement secured by the property
27 shall not exceed thirty-five percent (35%) of the value of the property. The calculation of value
28 used to determine the maximum amount of financing available for a particular property shall
29 reflect the reasonable expected stabilized value of the property with the proposed qualifying
30 improvements installed.

31 (d) The financing agreement between the capital provider and the property owner shall
32 be negotiated by the parties, including all terms and conditions of repayment, including interest,
33 penalties, and prepayment.

34 **"§ 160A-239.19. Lender consent.**

35 Prior to entering into an assessment agreement, the property owner must submit to the
36 statewide administrator a written statement, executed by each holder of a mortgage, deed of trust,
37 or other lien on the property securing indebtedness, indicating their consent to the C-PACE
38 assessment and that the C-PACE assessment does not constitute an event of default under the
39 terms of the mortgage, deed of trust, or other indebtedness secured by lien.

40 **"§ 160A-239.20. Prohibition on use of public funds.**

41 It is the intent of this Article that neither the State nor any local government shall use public
42 funds to fund or repay any C-PACE assessment. Nothing in this Article shall be interpreted as
43 authorizing a local government to pledge, offer, or encumber its full faith and credit, and no local
44 government shall pledge, offer, or encumber its full faith and credit under this Article.

45 **"§ 160A-239.21. Purchases and contracts.**

46 The proposed arrangements for C-PACE financing may authorize the property owner to do
47 any of the following:

48 (1) Directly purchase the related equipment and materials for the installation or
49 modification of a qualifying improvement.

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

4 **SECTION 2.** G.S. 105-375(i) reads as rewritten:

5 "(i) Issuance of Execution. – At any time after three months and before two years from
6 the indexing of the judgment as provided in subsection (b) of this section, execution shall be
7 issued at the request of the tax collector in the same manner as executions are issued upon other
8 judgments of the superior court, and the real property shall be sold by the sheriff in the same
9 manner as other real property is sold under execution with the following exceptions:

10 (1) No debtor's exemption shall be allowed.

11 (2) At least 30 days prior to the day fixed for the sale, the sheriff shall send notice
12 by registered or certified mail, return receipt requested, to the taxpayer at the
13 taxpayer's last known address, in lieu of personal service, and to all lienholders
14 of record. If within 10 days following the mailing of a notice, a return receipt
15 has not been received by the sheriff indicating receipt of the notice, then the
16 sheriff shall make additional efforts to locate and notify the taxpayer, if not
17 yet notified, and all unnotified lienholders of record of the sale under
18 execution in accordance with subdivision (4) of subsection (c) of this section.

19 (3) The sheriff shall add to the amount of the judgment as costs of the sale any
20 postage expenses incurred by the tax collector and the sheriff in foreclosing
21 under this section.

22 (4) In any advertisement or posted notice of sale under execution, the sheriff may
23 (and at the request of the governing body shall) combine the advertisements
24 or notices for properties to be sold under executions against the properties of
25 different taxpayers in favor of the same taxing unit or group of units; however,
26 the property included in each judgment shall be separately described and the
27 name of the taxpayer specified in connection with each property.

28 The purchaser at the execution sale acquires title to the property in fee simple free and clear
29 of all claims, rights, interests, and liens except the liens of other taxes or special assessments not
30 paid from the purchase price and not included in the ~~judgment~~ judgment, liens arising from
31 C-PACE assessments authorized under Article 10B of Chapter 160A of the General Statutes, and
32 conservation agreements, as defined in G.S. 121-35(1)."

33 **SECTION 3.** G.S. 105-374(k) reads as rewritten:

34 "(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing
35 unit in an action brought under this section shall order the sale of the real property or as much as
36 may be necessary for the satisfaction of all of the following:

37 (1) Taxes adjudged to be liens in favor of the plaintiff, other than taxes the amount
38 of which has not been definitely determined, together with penalties, interest,
39 and costs.

40 (2) Taxes adjudged to be liens in favor of other taxing units, other than taxes the
41 amount of which has not yet been definitely determined, if those taxes have
42 been alleged in answers filed by the other taxing units, together with penalties,
43 interest, and costs.

44 The judgment shall appoint a commissioner to conduct the sale and shall order that the property
45 be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever, except that
46 the sale shall be subject to (i) taxes the amount of which cannot be definitely determined at the
47 time of the judgment, (ii) taxes and special assessments of taxing units which are not parties to
48 the action, ~~(iii)~~ (iii) C-PACE assessments authorized under Article 10B of Chapter 160A of the
49 General Statutes, (iv) in the discretion of the court, taxes alleged in other tax foreclosure actions
50 or proceedings pending against the same real property, and ~~(iv)~~ (v) conservation agreements, as
51 defined in G.S. 121-35(1).

1 In all cases in which no answer is filed within the time allowed by law, and in cases in which
2 answers filed do not seek to prevent sale of the property, the clerk of the superior court may enter
3 the judgment, subject to appeal as provided in G.S. 1-301.1."

4 **SECTION 3.1.** G.S. 105-376(b) reads as rewritten:

5 "(b) Payment of Purchase Price by Taxing Units; Status of Property Purchased by Taxing
6 Units. – Any taxing unit that becomes the purchaser at a tax foreclosure sale may, in the discretion
7 of its governing body, pay only that part of the purchase price that would not be distributed to it
8 and other taxing units on account of taxes, penalties, interest, and such costs as accrued prior to
9 the initiation of the foreclosure action under G.S. 105-374 or docketing of a judgment under
10 G.S. 105-375. Thereafter, in such a case, the purchasing taxing unit shall hold the property for
11 the benefit of all taxing units that have an interest in the property as defined in this subsection
12 (b). All net income from real property so acquired and the proceeds thereof, when resold, shall
13 be first used to reimburse the purchasing unit for disbursements actually made by it in connection
14 with the foreclosure action and the purchase of the property, and any balance remaining shall be
15 distributed to the taxing units having an interest therein in proportion to their interests. The total
16 interest of each taxing unit, including the purchasing unit, shall be determined by adding:

- 17 (1) The taxes of the unit, with penalties, interest, and costs (other than costs
18 already reimbursed to the purchasing unit) to satisfy which the property was
19 ordered sold;
- 20 (2) Other taxes of the unit, with penalties, interest, and costs which would have
21 been paid in full from the purchase price had the purchase price been paid in
22 full;
- 23 (3) Taxes of the unit, with penalties, interest, and costs to which the foreclosure
24 sale was made subject; and
- 25 (4) The principal amount of all taxes which became liens on the property after
26 purchase at the foreclosure sale or which would have become liens thereon
27 but for the purchase, but no amount shall be included for taxes for years in
28 which (on the day as of which property was to be listed for taxation) the
29 property was being used by the purchasing unit for a public purpose.

30 If the amount of net income and proceeds of resale distributable exceeds the total interests of all
31 taxing units defined in this subsection (b), the remainder shall be applied to any special benefit
32 assessments to satisfy which the sale was ordered or to which the sale was made subject, and any
33 balance remaining shall accrue to the purchasing unit.

34 When any real property that has been purchased as provided in this section is permanently
35 dedicated to use for a public purpose, the purchasing unit shall make settlement with other taxing
36 units having an interest in the property (as defined in this subsection) in such manner and in such
37 amount as may be agreed upon by the governing bodies; and if no agreement can be reached, the
38 amount to be paid shall be determined by a resident judge of the superior court in the district in
39 which the property is situated.

40 Nothing in this section shall be construed as requiring the purchasing unit to secure the
41 approval of other interested taxing units before reselling the property or as requiring the
42 purchasing unit to pay other interested taxing units in full if the net income and resale price are
43 insufficient to make such payments.

44 Any taxing unit purchasing property at a foreclosure sale may, in the discretion of its
45 governing body, instead of following the foregoing provisions of this section, make full payment
46 of the purchase price, and thereafter it shall hold the property as sole owner in the same manner
47 as it holds other real property, subject only to taxes and special assessments, with penalties,
48 interest, and costs, and liens arising from C-PACE assessments under Article 10B of Chapter
49 160A of the General Statutes, to which the sale was made subject."

50 **SECTION 4.** G.S. 143-128.2(g) reads as rewritten:

51 "(g) As used in this section:

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(1) The term "minority business" means either of the following:

...

b. An Employee Stock Ownership Plan company in which at least fifty-one percent (51%) of the ~~stock is owned by one or more plan~~ participants are minority persons or socially and economically disadvantaged individuals.

...."

SECTION 5. G.S. 143-128.4(a) reads as rewritten:

"(a) As used in this Chapter, the term "historically underutilized business" means either of the following:

...

(2) An Employee Stock Ownership Plan company in which at least fifty-one percent (51%) of the ~~stock is owned by one or more persons who plan~~ participants are members of at least one of the groups set forth in subsection (b) of this section. An ESOP company applying for certification as a historically underutilized business shall provide an attestation that it meets the requirements of this subdivision together with such documentation supporting the attestation as may be required by the Secretary."

SECTION 6. This act becomes effective July 1, 2024.