



SENATE BILL 802: C-PACE Program.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	June 11, 2024
Introduced by:	Sens. Johnson, Lazzara, Lee	Prepared by:	Bill Patterson
Analysis of:	Third Edition		Staff Attorney

OVERVIEW: *Senate Bill 802 would establish the commercial property assessed capital expenditure program ("C-PACE Program"), to be administered by the Economic Development Partnership of North Carolina ("EDPNC") under the supervision of the Department of Commerce.*

Under the C-PACE Program, owners of qualifying commercial property could apply to EDPNC for long-term financing provided by private lenders to pay for property improvements that include energy efficiency, water conservation, renewable energy, and resilience measures.

Repayment of the amount financed would be secured by an assessment to be imposed on the improved property by local government that has chosen to participate in the C-PACE Program. A C-PACE lien would arise upon recordation of a notice of the C-PACE assessment and would remain upon the improved property until the financed amount is repaid in full. The C-PACE Program application would be required to include a signed consent to the C-PACE assessment by holders of any existing mortgages, deeds of trust, or other liens upon the property.

For each approved project, the local government would: 1) assign to the capital provider the right to receive the proceeds of assessment repayments; and 2) delegate to the capital provider all billing, collection and enforcement duties related to the C-PACE assessment.

The C-PACE lien would be inferior to all prior and subsequent State, local, and federal taxes or liens and would be superior to all other liens on the property. Purchasers of property sold to satisfy a tax lien would take title subject to any lien arising from a C-PACE assessment on the property.

The bill would also modify the criteria under which an employee stock ownership (ESOP) company can qualify as a minority business or an historically underutilized business for purposes of public contract provisions in Chapter 143 of the General Statutes.

BILL ANALYSIS:

C-PACE Program

Section 1 would amend Chapter 160A (Cities and Towns) of the General Statutes, to enact the "Commercial Property Assessed Capital Expenditure (C-PACE) Act" as new Article 10B.

Article 10B would establish the C-PACE Program, to be administered by the Economic Development Partnership of North Carolina ("EDPNC") as the program's statewide administrator, under the supervision of the Department of Commerce ("Department") as program sponsor.

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EDPNC would be responsible for reviewing and approving applications by owners of "qualifying commercial property" seeking C-PACE financing for "qualifying improvements" to their property.¹

EDPNC would be required to develop a C-PACE toolkit in consultation with stakeholders and local governments, and subject to approval by the Department, which would describe the guidelines, application approval criteria, and forms used in the administration of the C-PACE Program. The toolkit would include:

- An assessment agreement between a local government and property owner specifying the terms of the C-PACE assessment.
- A form of notice of the C-PACE assessment.
- A form of assignment of the C-PACE lien to the capital provider.
- A form of a consent to the C-PACE assessment to be executed by any existing holders of a mortgage, deed of trust, or other lien upon the qualifying commercial property.
- A project application.

Article 10B would authorize participating local governments to impose assessments upon property benefited by qualifying improvements funded by C-PACE financing. From the time of recordation of a notice of C-PACE assessment in the county where the property is located, the property would be subject to a C-PACE lien securing repayment of the amount financed. The C-PACE lien would be inferior to all prior and subsequent State, local, and federal tax liens and would be superior to all other liens. Foreclosure of a property tax or other lien would not extinguish the C-PACE lien.

The statewide administrator would be authorized to impose fees to offset the actual and reasonable costs of administering the program, including an application fee not to exceed \$750 and a processing fee assessed to the approved applicant equal to the lesser of 1% of the total amount financed or \$25,000.

An application for C-PACE financing for improvements to an existing building involving proposed renewable energy, energy efficiency, or water conservation measures would be required to include an energy analysis by a licensed energy engineering firm or engineer stating that the proposed improvements will achieve these goals. In the case of improvements to an existing building involving proposed resilience measures, the application would be required to include a licensed engineer's certification that the improvements will improve resilience.

An application for C-PACE financing for construction of a new building would be required to include a certification by a licensed engineering firm or engineer that the proposed improvements will allow the proposed project to exceed current State Building code requirement for energy or water efficiency or achieve compliance with a model national resiliency standard.

An application for a project involving improvements to an existing or a new building would be required to include a certification by a licensed engineering firm or engineer that all available electric public utility efficiency and demand response programs available to property owners and their tenants have been evaluated prior to applying for C-PACE financing.

¹ As used in Article 10B, "qualifying commercial property" would mean any privately owned commercial, industrial, or agricultural real property, or privately owned residential real property comprising five or more dwelling units, and "qualifying improvement" would mean a permanently affixed improvement to a building on a qualifying commercial property, as part of the construction or renovation of the property, that includes one or more energy efficiency, resiliency, renewable energy, or water conservation measures approved by the Department.

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The total amount of C-PACE financing for a qualifying improvement could not exceed 35% of the reasonable expected stabilized value of the property with the proposed qualifying improvements installed.

In order to participate in the C-PACE Program, a local government would be required to adopt a resolution including the following:

- A grant of authorization for the C-PACE Program to be administered within its jurisdictional boundaries by the statewide administrator.
- A statement of the local government's intent to: authorize C-PACE financing and imposition of C-PACE assessments on qualifying commercial property to secure repayment; assign C-PACE liens to the capital providers; and delegate billing, collection and enforcement duties for the C-PACE assessments and C-PACE liens to capital providers.
- A statement that the C-PACE financing terms for each assessment will be pursuant to the terms of the related financing agreement.
- A statement identifying the local government department or employee responsible for executing documents required for C-PACE financing on behalf of the local government and stating that the statewide administrator will reimburse the local government for the actual and reasonable costs associated with performing this duty.
- A statement of the time and place for a public hearing on the proposed program.

After conducting the public hearing, the local government could then adopt a resolution to join the C-PACE Program. A city's resolution to join the C-PACE program would be effective only with the concurrence of the governing board of the county in which the city is located.

A delinquent C-PACE assessment payment would be enforced by a capital provider in the manner of a foreclosure of a deed of trust. Foreclosure to enforce a C-PACE lien, property tax lien, or other lien would not accelerate or extinguish C-PACE assessment payments not yet due.

C-PACE assessments for improvements to leasehold property would be levied on the leasehold interest with the consent of the owner of the property and would be payable by the owner of the leasehold interest.

Sections 2, 3, and 4 would make conforming changes to Article 26 (Collection and Foreclosure) of Chapter 105 (Taxation) of the General Statutes to provide that purchasers of property sold to enforce a tax lien would take title subject to any C-PACE assessments authorized under Article 10B of Chapter 160A of the General Statutes.

ESOP Company Qualification as a Minority Business or Historically Underutilized Business

Under current law, for purposes of meeting minority business participation goals pertaining to State building projects, an Employee Stock Ownership Plan (ESOP) company qualifies as a "minority business" if at least 51% of the company's stock is owned by minority persons or socially and economically disadvantaged persons.²

² "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets." 15 U.S.C 637(a)(6)(A).

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Section 5 would provide that for an ESOP company to qualify as a minority business, at least 51% of the company's plan participants must be minority persons or socially and economically disadvantaged individuals.

Under current law, the Secretary of Administration is responsible for certifying "historically underutilized businesses under Chapter 143 of the General Statutes. An ESOP company can be certified as an "historically underutilized business" if at least 51% of the company's stock is owned by members of at least one of the following groups: Black, Hispanic, Asian-American, American Indian, female, disabled, or disadvantaged.

Section 6 would provide that for an ESOP company to qualify for certification as an historically underutilized business, at least 51% of the company's plan participants must be members of at least one of the aforementioned groups. It would also require any ESOP company seeking to be certified as an historically underutilized business to submit an attestation that it meets the requirements for certification, together with any supporting documentation as may be required by the Secretary.

EFFECTIVE DATE: This act would become effective July 1, 2024.