SENATE BILL 802:
C-PACE Program.

2023-2024 General Assembly

Committee:		**Date:**	July 9, 2024
Introduced by:		**Prepared by:**	Bill Patterson
Analysis of:	S.L. 2024-44		Staff Attorney

OVERVIEW: S.L. 2024-44:

- ***Establishes 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, providing a procedure by which owners of qualifying commercial property can apply to EDPNC for long-term financing to be provided by private lenders that will pay for property improvements that include energy efficiency, water conservation, renewable energy, and resilience measures, with repayment of the financed amount secured by a lien upon the improved property.***
- ***Modifies 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.***
- ***Requires the Department of Environmental Quality and the Environmental Management Commission, no later than August 1, 2024, to develop and submit draft rules to the United States Environmental Protection Agency (USEPA) for USEPA's approval that establish methodologies and permitting requirements for the discharge of low-risk treated domestic wastewaters following site specific criteria to surface waters of the State.***

The provisions regarding development of rules for wastewater discharge became effective July 8, 2024. The remainder of the act became effective July 1, 2024.

CURRENT LAW AND BILL ANALYSIS:

C-PACE Program

Section 1 amends 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 establishes the C-PACE Program, to be administered by the Economic Development Partnership of North Carolina (EDPNC) under the supervision of the Department of Commerce (Department).

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

[1] As used in Article 10B, "qualifying commercial property" means any privately owned commercial, industrial, or agricultural real property, or privately owned residential real property comprising five or more dwelling units, and "qualifying improvement" means a permanently affixed improvement to a building on a qualifying commercial property, as part of the construction or renovation of the property,

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

- An assessment agreement between the 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 authorizes 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 will be subject to a C-PACE lien securing repayment of the amount financed. The C-PACE lien will be inferior to all prior and subsequent State, local, and federal tax liens and will be superior to all other liens. Foreclosure of a property tax or other lien will not extinguish the C-PACE lien.

EDPNC is authorized to impose fees to offset the actual and reasonable costs of administrating 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 must 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 must include a licensed engineer's certification that the improvements will improve resilience.

An application for C-PACE financing for construction of a new building must 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 must 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.

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

In order to participate in the C-PACE Program, a local government must 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.

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that includes one or more energy efficiency, resiliency, renewable energy, or water conservation measures approved by the Department.

- 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 can then adopt a resolution to join the C-PACE Program. A city's resolution to join the C-PACE program will 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 can 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 will not accelerate or extinguish any C-PACE assessment payments not yet due.

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

Sections 2, 3, and 3.1 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 will 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" as defined in 15 U.S.C. 637.[2]

Section 4 provides 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, an ESOP company can be certified by the Secretary of Administration 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.

[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).

Section 5 makes the following changes**:**

- Provides 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.
- Requires 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.

Modernize Wastewater Permitting to Support Environmentally Sound Economic Development

Section 12.9 of S.L. 2023-134 established a new statutory requirement that the Department of Environmental Quality (DEQ) permit discharges of highly treated domestic wastewater to surface waters of the State where the 7Q10 flow or 30Q2 flow of the receiving waterbody is estimated to be low flow or zero flow if the wastewater treatment system is capable of meeting specific water quality-based effluent limitations for nine listed parameters. Such discharges, however:

- Must be directed through buffer systems meeting standards as set forth in the section.
- Are generally prohibited to classified shellfish waters or outstanding resource waters.
- Are limited based on the ability of the receiving waters to hydraulicly accept the proposed flow as determined through methods established in the section.

The section further provides that:

- Once an applicant has submitted data to demonstrate that a proposed discharge meets the requirements of this section, signed, and sealed by a professional engineer licensed in accordance with the provisions of Chapter 89C of the General Statutes, DEQ must deem the application complete for the purposes of DEQ's review.
- If rules are required in order to implement the requirements of this section, DEQ must adopt temporary rules no later than 60 days after this section becomes law. Any temporary rules adopted will remain in effect until permanent rules that replace the temporary rules become effective. Rules adopted cannot, however, impose additional requirements on permitting of the discharge of highly treated domestic wastewater over that established under this section.

Section 5.1 repealed Section 12.9 of S.L. 2023-134, and requires DEQ and the Environmental Management Commission, no later than August 1, 2024, to develop and submit to the United States Environmental Protection Agency for USEPA's approval draft rules that establish methodologies and permitting requirements for the discharge of treated domestic wastewaters with low risk[1] following site specific criteria to surface waters of the State, including wetlands, perennial streams, and unnamed tributaries of named and classified streams and intermittent streams or drainage courses where the 7Q10 flow or 30Q2 flow of the receiving water is estimated to be low flow or zero flow, or under certain conditions non-existent, as determined by the United States Geological Survey (USGS). Within 20 days of the date USEPA approves the draft rules submitted pursuant to this subsection, the Commission must initiate the process for temporary and permanent rules.

[1] "Low-risk discharges" means discharges of 2 million gallons per day or less of treated domestic wastewater when the dissolved oxygen content (DO) of the effluent is significantly higher (1.5 mg/l or greater) than the DO of the receiving water during low flow periods and the biological oxygen demand content (BOD) of the effluent is significantly lower (1.5 mg/l or more) than the DO of the effluent.

EFFECTIVE DATE: Section 5.1 became effective July 8, 2024. The remainder of this act became effective July 1, 2024.

**LAD Staff Attorney Jennifer McGinnis substantially contributed to this summary.*