



SENATE BILL 802: C-PACE Program.

2023-2024 General Assembly

Committee:	Senate Commerce and Insurance. If favorable, re-refer to Finance. If favorable, re-refer to Appropriations/Base Budget. If favorable, re-refer to Rules and Operations of the Senate	Date:	May 20, 2024
Introduced by:	Sens. Johnson, Lazzara, Lee	Prepared by:	Bill Patterson Committee Co-Counsel
Analysis of:	PCS to First Edition S802-CSTG-44		

OVERVIEW: *The Proposed Committee Substitute for 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 to be approved for long-term financing provided by private lenders to pay for property improvements that would include energy efficiency, water conservation, renewable energy, and resilience measures.

Repayment of the amount financed would be secured by an assessment imposed on the improved property by a participating local government. Upon recordation of a notice of the C-PACE assessment, a C-PACE lien would arise that would remain upon the improved property until the financed amount is repaid in full. The 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 assign to the capital provider the right to receive the proceeds of assessment repayments, and would 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 superior to all other liens on the property, and purchasers of property sold to satisfy a tax lien would take title subject to any C-PACE assessments on the property.

BILL ANALYSIS: 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.

The C-PACE Program authorized under Article 10B would 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. EDPNC would be responsible for reviewing applications by owners of qualifying commercial property for C-PACE financing of qualifying improvements to their property and for approving those applications meeting program requirements.

As used in Article 10B, a "qualifying commercial property" would be any privately owned commercial, industrial, or agricultural real property, or privately owned residential real property comprising five or more dwelling units. A "qualifying improvement" would be a permanent improvement to a qualifying

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

EDPNC would be required to consult with local governments and with the Department in developing a C-PACE toolkit describing 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.

A local government seeking to participate in the C-PACE Program 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

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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 would be allowed to adopt a resolution to join the C-PACE Program.

The capital provider would enforce a delinquent C-PACE assessment payment in the manner of foreclosure of a deed of trust. Assessment payments not yet due would not be accelerated or extinguished by foreclosure to enforce a C-PACE lien, property tax lien, or other lien. 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 and 3 would amend 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.

Section 4 would appropriate \$50,000 in nonrecurring funds from the General Fund to the Department of Commerce for the 2024-2025 fiscal year to allocate to EDPNC to develop the C-PACE toolkit as required under Section 1.

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