



# SENATE BILL 802: C-PACE Program.

2023-2024 General Assembly

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<b>Committee:</b>	Senate Judiciary. 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	<b>Date:</b>	June 3, 2024
<b>Introduced by:</b>	Sens. Johnson, Lazzara, Lee	<b>Prepared by:</b>	Bill Patterson
<b>Analysis of:</b>	Second Edition		Committee Co-Counsel

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**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 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.*

*The bill would also modify the criteria under which an employee stock ownership company can qualify as a minority business or an historically underutilized business under Chapter 143 of the General Statutes.*

**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

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# Senate Bill 802

Page 2

more dwelling units. A "qualifying improvement" would be a permanent improvement to a qualifying 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.

# Senate Bill 802

Page 3

- 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 would be allowed to adopt a resolution to join the C-PACE Program. The resolution of a city to join the C-PACE program would only be effective with the concurrence of the governing board of the county in which the city is located.

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.

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.<sup>1</sup>

**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.

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<sup>1</sup> "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).

# Senate Bill 802

*Page 4*

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