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SENATE BILL DRS45442-TGa-3

Short Title: C-PACE Program.

(Public)

Sponsors: Senators Johnson, Lazzara, and Lee (Primary Sponsors).

Referred to:

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.

8 The General Assembly of North Carolina enacts:

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

11 "Article 10B.

12 "Commercial Property Assessed Capital Expenditure and Resilience Act (C-PACE).

13 "**§ 160A-239.11. Purpose; findings.**

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

31 "**§ 160A-239.12. Definitions.**

32 The following definitions apply in this Article:

- 33 (1) Capital provider. – A private entity, or the private entity's designee, successor,
34 and assigns, that makes or funds qualifying improvements under this Article.
35 (2) Commercial property assessed capital expenditure program (C-PACE
36 program). – A program wherein a C-PACE assessment and C-PACE lien are



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- 1 voluntarily imposed by a local government on qualifying commercial property
2 to pay for the costs of qualifying improvements.
- 3 (3) C-PACE assessment. – A voluntary assessment imposed on a commercial
4 property by a local government under this Article pursuant to an assessment
5 agreement for the total amount of the C-PACE financing. The voluntary
6 C-PACE assessment shall not constitute a tax.
- 7 (4) C-PACE financing. – Direct financing between capital providers and property
8 owners within the jurisdictional boundaries of a local government
9 participating in the C-PACE program to finance qualifying improvements.
- 10 (5) C-PACE lien. – A lien to secure the C-PACE assessment that remains on the
11 qualifying property until paid in full.
- 12 (6) C-PACE toolkit. – A comprehensive set of documents developed by the
13 statewide administrator in consultation with stakeholders, and subject to
14 approval by the program sponsor, that describes the C-PACE program
15 guidelines, application approval criteria, and forms consistent with the
16 administration of the program as provided for in this Article.
- 17 (7) Financing agreement. – The contract in which a property owner agrees to
18 repay a capital provider for the C-PACE financing provided, including, but
19 not limited to, any finance charges, fees, debt servicing, accrual of interest and
20 penalties, and any terms relating to the treatment of prepayment and partial
21 payment, and the billing, collection, and enforcement of the C-PACE
22 financing.
- 23 (8) Local government. – Any county or city.
- 24 (9) Program sponsor. – The North Carolina Department of Commerce.
- 25 (10) Project application. – The application submitted to the statewide administrator
26 by the property owner to demonstrate that a proposed project qualifies for
27 C-PACE financing under this Article.
- 28 (11) Property owner. – The owner or owners of a commercial property whose
29 names are listed on the property title, duly recorded in the appropriate office
30 of the register of deeds.
- 31 (12) Publicly-owned land. – Property that is owned by a State or local
32 governmental entity and that is subject to a leasehold.
- 33 (13) Qualifying commercial property. – Privately owned commercial, industrial,
34 or agricultural real property or privately owned residential real property
35 consisting of five or more dwelling units. This term includes property owned
36 by nonprofit, charitable, or religious organizations.
- 37 (14) Qualifying improvement. – A permanent improvement that is affixed to a
38 qualifying commercial property and that includes one or more of the following
39 approved by the program sponsor:
- 40 a. Energy efficiency measure. – An equipment, physical component, or
41 program change implemented that results in less energy used to
42 perform the same function, including, but not limited to, energy
43 produced from a combined heat and power system that uses
44 nonrenewable energy resources.
- 45 b. Resiliency measure. – An equipment, physical component, or program
46 change implemented that includes, but is not limited to, storm retrofits,
47 flood mitigation, stormwater management, wind resistance, indoor air
48 quality improvement, energy storage, and microgrids and other
49 resilience projects.
- 50 c. Renewable energy measure. – (i) A solar electric, solar thermal, wind,
51 hydropower, geothermal, electric vehicle charging station, or ocean

1 current or wave energy resource, (ii) a biomass resource, including
2 agricultural waste, animal waste, wood waste, spent pulping liquors,
3 combustible residues, combustible liquids, combustible gases, energy
4 crops, or landfill methane, (iii) waste heat derived from a renewable
5 energy resource and used to produce electricity or useful, measurable
6 thermal energy at a retail electric customer's facility, or (iv) hydrogen
7 derived from a renewable energy resource. For purposes of this
8 sub-subdivision, the term "renewable energy measure" does not
9 include peat or a fossil fuel.

10 d. Water conservation measure. – An equipment, physical component, or
11 program change implemented to decrease water consumption or
12 demand or to address safe drinking water.

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

15 **"§ 160A-239.13. Statewide C-PACE program – authorization.**

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

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

20 **"§ 160A-239.14. Statewide C-PACE program – administration.**

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

23 (1) Prepare a C-PACE toolkit in consultation with local governments and the
24 Program Sponsor prior to accepting applications for C-PACE financing,
25 which shall include, at a 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 and C-PACE lien.

30 c. A form of assignment of notice of C-PACE assessment and C-PACE
31 lien from the local government to the capital provider.

32 d. A form of consent to a C-PACE assessment by the holder of the
33 mortgage or deed of trust.

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

37 (2) Impose fees to offset the actual and reasonable costs of administering the
38 C-PACE program, including:

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

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

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

46 a. For an existing building: (i) where renewable energy, energy
47 efficiency, or water conservation measures are proposed, an energy
48 analysis by a licensed engineering firm or engineer or another
49 qualified professional listed in the C-PACE toolkit stating that the
50 proposed qualifying improvements will result in more efficient use or
51 conservation of energy or water, the reduction of greenhouse gas

- 1 emissions, or the addition of renewable sources of energy or water or
2 (ii) where resilience measures are proposed, certification by a licensed
3 engineer stating that the qualifying improvements will result in
4 improved resilience.
- 5 b. For construction of a new building, certification by a licensed
6 engineering firm or engineer stating that the proposed qualifying
7 improvements will allow the proposed project to exceed the energy or
8 water efficiency requirements of the current State building code, or in
9 the case of a resiliency measure, achieve compliance with a national
10 model resiliency standard.
- 11 (4) Accept and approve project applications for C-PACE financing.
- 12 (5) Require any commercial property owner seeking C-PACE financing to certify
13 that the applicant:
- 14 a. Is the legal owner of the benefited property and that title to the
15 benefited property is not in dispute.
- 16 b. Is current on all mortgage payments and property taxes.
- 17 c. Is not insolvent or in bankruptcy proceedings.
- 18 (6) Upon execution by the local government of (i) C-PACE assessment and
19 C-PACE lien and (ii) a notice of assignment of C-PACE assessment and
20 C-PACE lien related to an approved project application, record such
21 documents in the office of the register of deeds in the county in which the
22 approved property is located. The statewide administrator may delegate
23 recording duties to the property owner and the capital provider.
- 24 (7) Submit a report to the Program Sponsor annually.
- 25 (b) The provisions of Chapter 150B of the General Statutes shall not apply to the C-PACE
26 toolkit or any actions of the program sponsor or statewide administrator in the administration of
27 the program.
- 28 **§ 160A-239.15. Local government participation.**
- 29 (a) A local government seeking to participate in the C-PACE program shall adopt a
30 resolution that includes all of the following:
- 31 (1) A grant of authorization for the C-PACE program to operate within its
32 jurisdictional boundaries and for the statewide administrator to provide the
33 administrative services described in G.S. 160A-239.14.
- 34 (2) A statement that the local government intends to (i) authorize C-PACE
35 financing, (ii) authorize the imposition of C-PACE assessments and C-PACE
36 liens on qualifying commercial properties benefitting from qualifying
37 improvements to secure repayment of C-PACE financing and assign the same
38 or the right to repayment proceeds to the capital provider providing C-PACE
39 financing, and (iii) delegate billing, collection, and enforcement duties for the
40 C-PACE assessment and C-PACE lien to capital providers.
- 41 (3) A statement that the amount of a C-PACE financing and related assessment
42 repayment terms shall be pursuant to the related financing agreement.
- 43 (4) A statement identifying the local government department or employee that
44 shall, upon receipt of an approved project application for C-PACE financing
45 within its jurisdictional boundaries from the statewide administrator, execute
46 the documents included in G.S. 160A-239.14(a)(1)a., b., and c. on behalf of
47 the local government.
- 48 (5) A statement that the local government shall be reimbursed by the statewide
49 administrator for the actual and reasonable costs associated with the
50 performance of the duties described in subdivision (4) of this subsection.

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

5 **"§ 160A-239.16. Immunity and foreclosure process.**

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

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

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

14 (d) Enforcement of a delinquent C-PACE assessment payment by the capital provider
15 shall be in the manner of the foreclosure of a deed of trust as provided in Article 2A of Chapter
16 45 of the General Statutes, except that C-PACE assessment payments not yet billed or due may
17 not be accelerated or extinguished by foreclosure of the delinquent assessment payment or
18 payments. Any outstanding or delinquent State, local, or federal taxes or liens at the time of the
19 foreclosure proceeding shall be satisfied first, but the C-PACE lien shall be superior to all other
20 liens on the property from the date on which the notice of the C-PACE lien was recorded until
21 the C-PACE lien, interest, penalties, and charges accrued or accruing are paid.

22 **"§ 160A-239.17. C-PACE assessment and lien.**

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

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

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

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

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

38 **"§ 160A-239.18. Financing.**

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

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

43 (2) Permit fees.

44 (3) Inspection fees.

45 (4) Financing fees.

46 (5) Application and administrative fees.

47 (6) Project development and engineering fees.

48 (7) Interest reserves.

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

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

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

6 (c) The financing agreement between the capital provider and the property owner shall
7 be negotiated by the parties, including all terms and conditions of repayment, including interest,
8 penalties, and prepayment.

9 **"§ 160A-239.19. Lender consent.**

10 Prior to entering into an assessment agreement, the property owner must submit to the
11 statewide administrator a written statement, executed by each holder of the mortgage or deed of
12 trust on the property securing indebtedness, indicating their consent to the C-PACE assessment
13 and that the C-PACE assessment does not constitute an event of default under the terms of the
14 mortgage or deed of trust.

15 **"§ 160A-239.20. Prohibition on use of public funds.**

16 It is the intent of this Article that neither the State nor any local government shall use public
17 funds to fund or repay any loan between a capital provider and property owner. Nothing in this
18 Article shall be interpreted as authorizing a local government to pledge, offer, or encumber its
19 full faith and credit, and no local government shall pledge, offer, or encumber its full faith and
20 credit under this Article.

21 **"§ 160A-239.21. Purchases and contracts.**

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

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

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

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

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

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

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

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

47 (4) In any advertisement or posted notice of sale under execution, the sheriff may
48 (and at the request of the governing body shall) combine the advertisements
49 or notices for properties to be sold under executions against the properties of
50 different taxpayers in favor of the same taxing unit or group of units; however,

1 the property included in each judgment shall be separately described and the
2 name of the taxpayer specified in connection with each property.

3 The purchaser at the execution sale acquires title to the property in fee simple free and clear
4 of all claims, rights, interests, and liens except the liens of other ~~taxes or taxes,~~ special
5 ~~assessments~~ assessments, and C-PACE assessments authorized under Article 10B of Chapter
6 160A of the General Statutes not paid from the purchase price and not included in the judgment
7 and conservation agreements, as defined in G.S. 121-35(1)."

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

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

- 12 (1) Taxes adjudged to be liens in favor of the plaintiff, other than taxes the amount
13 of which has not been definitely determined, together with penalties, interest,
14 and costs.
15 (2) Taxes adjudged to be liens in favor of other taxing units, other than taxes the
16 amount of which has not yet been definitely determined, if those taxes have
17 been alleged in answers filed by the other taxing units, together with penalties,
18 interest, and costs.

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

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

30 **SECTION 4.** There is appropriated from the General Fund to the Department of
31 Commerce the sum of fifty thousand dollars (\$50,000) in nonrecurring funds for the 2024-2025
32 fiscal year to allocate to the Economic Development Partnership of North Carolina to develop
33 the C-PACE toolkit pursuant to G.S. 160A-239.14.

34 **SECTION 5.** This act becomes effective July 1, 2024.