

Article 10B.

Commercial Property Assessed Capital Expenditure (C-PACE) Act.

§ 160A-239.11. Purpose; findings.

This Article shall be known and may be cited as the "Commercial Property Assessed Capital Expenditure (C-PACE) Act." This Article authorizes the establishment of a statewide C-PACE Program that local governments may voluntarily join to allow willing owners of commercial, industrial, agricultural, nonprofit, and multifamily residential properties with five or more dwelling units to obtain low-cost, long-term financing for qualifying improvements, including energy efficiency, water conservation, renewable energy, and resilience projects, secured by an assessment and lien authorized by this Article. The State finds that a valid public purpose exists because the use of a C-PACE Program creates an additional financing mechanism for property owners to use private funds to finance improvements to their eligible property, thereby driving economic development by creating a diversity of jobs in the resilience and clean energy sectors of the economy. The assessment requires minimal upfront costs and provides a more accessible financial mechanism to fund improvements that will increase the tax value of the affected properties at minimal administrative cost to local governments. C-PACE improvements allow property owners to save on their utility bills because the improvements lead to energy or utility savings and will result in improved indoor air quality or increased resilience, which will increase the ability of communities and local governments to respond to natural disasters and improve public health. (2024-44, s. 1.)

§ 160A-239.12. Definitions.

The following definitions apply in this Article:

- (1) Capital provider. – A private entity, or the private entity's designee, successor, and assigns, that makes or funds qualifying improvements under this Article.
- (2) Commercial property assessed capital expenditure program (C-PACE Program). – A program wherein a C-PACE assessment and C-PACE lien are voluntarily imposed by a local government on qualifying commercial property to pay for the costs of qualifying improvements.
- (3) C-PACE assessment. – A voluntary assessment imposed on a commercial property by a local government under this Article pursuant to an assessment agreement for the total amount of the C-PACE financing. The voluntary C-PACE assessment shall not constitute a tax.
- (4) C-PACE financing. – Direct financing between capital providers and property owners within the jurisdictional boundaries of a local government participating in the C-PACE Program to finance qualifying improvements.
- (5) C-PACE lien. – A lien to secure the C-PACE assessment that remains on the qualifying property until paid in full.
- (6) C-PACE toolkit. – A comprehensive set of documents developed by the statewide administrator in consultation with stakeholders and local governments and subject to approval by the program sponsor that describes the C-PACE Program guidelines, application approval criteria, and forms consistent with the administration of the program as provided for in this Article.
- (7) Financing agreement. – The contract in which a property owner agrees to repay a capital provider for the C-PACE financing provided, including, but not limited to, any finance charges, fees, debt servicing, accrual of interest and penalties,

and any terms relating to the treatment of prepayment and partial payment, and the billing, collection, and enforcement of the C-PACE financing.

- (8) Local government. – Any county or city.
- (9) Program sponsor. – The North Carolina Department of Commerce.
- (10) Project application. – The application submitted to the statewide administrator by the property owner to demonstrate that a proposed project qualifies for C-PACE financing under this Article.
- (11) Property owner. – The holder of title in fee simple to a qualifying commercial property.
- (12) Publicly-owned land. – Property that is owned by a State or local governmental entity and that is subject to a leasehold.
- (13) Qualifying commercial property. – Privately owned commercial, industrial, or agricultural real property or privately owned residential real property consisting of five or more dwelling units. This term includes property owned by nonprofit, charitable, or religious organizations.
- (14) Qualifying improvement. – A permanently affixed improvement to a building on a qualifying commercial property as part of the construction or renovation of the qualifying property and that includes one or more of the following approved by the program sponsor:
 - a. Energy efficiency measure. – An equipment, physical component, or program change implemented that results in less energy used to perform the same function and that meets or exceeds then-existing State and federal building codes and efficiency standards or conservation codes, including, but not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources.
 - b. Resiliency measure. – An equipment, physical component, or program change implemented that includes, but is not limited to, storm retrofits, flood mitigation, stormwater management, wind resistance, indoor air quality improvement, electric vehicle charging station, backup energy generators enrolled in an electric public utility demand response program, energy storage, and microgrids and other resilience projects.
 - c. Renewable energy measure. – A renewable energy resource as defined in G.S. 62-133.8.
 - d. Water conservation measure. – An equipment, physical component, or program change implemented to decrease water consumption or demand or to address safe drinking water.
- (15) Statewide administrator. – The Economic Development Partnership of North Carolina. (2024-44, s. 1.)

§ 160A-239.13. Statewide C-PACE Program – authorization.

- (a) The State authorizes a statewide C-PACE Program in which any local government may participate.
- (b) The program sponsor is hereby authorized under this Article to oversee the C-PACE Program. (2024-44, s. 1.)

§ 160A-239.14. Statewide C-PACE Program – administration.

- (a) In the administration of the C-PACE Program, the statewide administrator shall do the following:
- (1) Prepare a C-PACE toolkit in consultation with stakeholders and local governments and subject to approval by the program sponsor prior to accepting applications for C-PACE financing, which shall include, at a minimum, all of the following:
 - a. A form of assessment agreement to be used between a local government and property owner specifying the terms of the C-PACE assessment.
 - b. A form of notice of C-PACE assessment that identifies the qualified commercial property subject to the C-PACE assessment and the property owner consenting to the C-PACE assessment.
 - c. A form of assignment of the C-PACE lien from the local government to the capital provider that cross-references the registry book and page number of the notice C-PACE assessment giving rise to the lien.
 - d. A form of consent to a C-PACE assessment by the holder of a mortgage, deed of trust, or other lien upon the qualifying commercial property.
 - e. A form of project application with checklist requirements and corresponding documentation that will be required by the statewide administrator to approve a project application.
 - (2) Impose fees to offset the actual and reasonable costs of administering the C-PACE Program, including:
 - a. An application fee not to exceed seven hundred fifty dollars (\$750.00).
 - b. A processing fee assessed to the property owner whose application for C-PACE financing is approved, which shall be one percent (1%) of the total amount financed but shall not be more than twenty-five thousand dollars (\$25,000).
 - (3) Establish the process for reviewing and evaluating applications, which shall, at a minimum, require the following to be provided or demonstrated:
 - a. For an existing building: (i) where renewable energy, energy efficiency, or water conservation measures are proposed, an energy analysis by a licensed engineering firm or engineer or another qualified professional listed in the C-PACE toolkit stating that the proposed qualifying improvements will result in more efficient use or conservation of energy that meets or exceeds then-existing State and federal building codes and efficiency standards or conservation codes, more efficient use or conservation of water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water or (ii) where resilience measures are proposed, certification by a licensed engineer stating that the qualifying improvements will result in improved resilience.
 - b. For construction of a new building, certification by a licensed engineering firm or engineer stating that the proposed qualifying improvements will allow the proposed project to exceed the energy or water efficiency requirements of the current State building code, or in the case of a resiliency measure, achieve compliance with a national model resiliency standard.

- c. For existing or new buildings, certification by a licensed engineering firm or engineer that all available electric public utility energy efficiency and demand response programs available to property owners and any tenants thereof have been evaluated prior to applying for C-PACE financing.
- (4) Accept and approve project applications for C-PACE financing meeting the requirements of subdivision (3) of this subsection.
- (5) Require any property owner applying for C-PACE financing to certify that the applicant:
 - a. Is the holder of title in fee simple to the qualifying commercial property and that title to the qualifying commercial property is not in dispute.
 - b. Is current on all mortgage payments and property taxes.
 - c. Is not insolvent or in bankruptcy proceedings.
- (6) Upon execution by the local government of (i) a C-PACE assessment and (ii) a notice of assignment of C-PACE lien related to an approved project application, record such documents in the office of the register of deeds in the county in which the approved property is located. The statewide administrator may delegate recording duties to the property owner and the capital provider.
- (7) Submit a report to the program sponsor annually.
- (b) The provisions of Chapter 150B of the General Statutes shall not apply to the C-PACE toolkit or any actions of the program sponsor or statewide administrator in the administration of the program. (2024-44, s. 1.)

§ 160A-239.15. Local government participation.

- (a) A local government seeking to participate in the C-PACE Program shall adopt a resolution that includes all of the following:
 - (1) A grant of authorization for the C-PACE Program to operate within its jurisdictional boundaries and for the statewide administrator to provide the administrative services described in G.S. 160A-239.14.
 - (2) A statement that the local government intends to (i) authorize C-PACE financing, (ii) authorize the imposition of C-PACE assessments on qualifying commercial properties benefitting from qualifying improvements to secure repayment of C-PACE financing, (iii) assign the C-PACE lien to the capital provider providing C-PACE financing, and (iv) delegate billing, collection, and enforcement duties for the C-PACE assessment and C-PACE lien to capital providers.
 - (3) A statement that the amount of a C-PACE financing and related assessment repayment terms shall be pursuant to the related financing agreement.
 - (4) A statement identifying the local government department or employee that shall, upon receipt of an approved project application for C-PACE financing within its jurisdictional boundaries from the statewide administrator, execute the documents included in G.S. 160A-239.14(a)(1)a., b., and c. on behalf of the local government.
 - (5) A statement that the local government shall be reimbursed by the statewide administrator for the actual and reasonable costs associated with the performance of the duties described in subdivision (4) of this subsection.

(6) A statement of the time and place for a public hearing on the proposed program.

(b) The governing body of the local government may, after conducting a public hearing on the proposed program, adopt a resolution providing that the local government is joining the C-PACE Program. If the local government seeking to participate in the C-PACE Program is a city, the resolution adopted pursuant to this subsection shall be effective only with the concurrence of the governing body of the county in which the city is located.

(c) Pursuant to G.S. 160A-239.17(4), no funds for repayment of the voluntary C-PACE assessment should be received by the participating local government. However, if any such funds are received by the participating local government, such funds shall be custodial funds as described in G.S. 159-13(a) for the benefit of the capital provider. (2024-44, s. 1.)

§ 160A-239.16. Immunity and foreclosure process.

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

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

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

(d) Enforcement of a delinquent C-PACE assessment payment by the capital provider shall be in the manner of the foreclosure of a deed of trust as provided in Article 2A of Chapter 45 of the General Statutes, except that C-PACE assessment payments not yet billed or due may not be accelerated or extinguished by foreclosure of the delinquent assessment payment or payments. Any outstanding or delinquent State, local, or federal taxes or liens at the time of the foreclosure proceeding shall be satisfied first, but the C-PACE lien shall be superior to all other liens on the property from the date on which the notice of the C-PACE assessment was recorded until the C-PACE assessment, interest, penalties, and charges accrued or accruing are paid. (2024-44, s. 1.)

§ 160A-239.17. C-PACE assessment and lien.

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

- (1) The lien shall be inferior to all prior and subsequent State, local, and federal taxes or liens and superior to all other liens on the property from the date on which the notice of the C-PACE assessment is recorded until the C-PACE assessment, interest, penalties, and charges accrued or accruing are paid.
- (2) The lien shall run with the land, and that portion of the C-PACE assessment that is not yet due may not be accelerated or eliminated by foreclosure of a property tax or other lien.
- (3) The C-PACE lien may not be contested on the basis that the improvement is not a qualified improvement or for any procedural or substantive irregularities related to the financing.
- (4) For C-PACE assessments for leaseholds, the C-PACE assessment may be levied on the leasehold or possessory interest, including on publicly-owned land, subject to the consent of the entity owning the property and shall be payable by the owner of the leasehold interest. (2024-44, s. 1.)

§ 160A-239.18. Financing.

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

- (1) The cost of materials and labor necessary for the installation or modification of a qualified improvement.
- (2) Permit fees.
- (3) Inspection fees.
- (4) Financing fees.
- (5) Application and administrative fees.
- (6) Project development and engineering fees.
- (7) Interest reserves.
- (8) Capitalized interest, in an amount determined by the owner of the commercial property and the capital provider.
- (9) Any other fees or costs incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.

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

(c) The total amount for financing of the qualifying improvement secured by the property shall not exceed thirty-five percent (35%) of the value of the property. The calculation of value used to determine the maximum amount of financing available for a particular property shall reflect the reasonable expected stabilized value of the property with the proposed qualifying improvements installed.

(d) The financing agreement between the capital provider and the property owner shall be negotiated by the parties, including all terms and conditions of repayment, including interest, penalties, and prepayment. (2024-44, s. 1.)

§ 160A-239.19. Lender consent.

Prior to entering into an assessment agreement, the property owner must submit to the statewide administrator a written statement, executed by each holder of a mortgage, deed of trust, or other lien on the property securing indebtedness, indicating their consent to the C-PACE assessment and that the C-PACE assessment does not constitute an event of default under the terms of the mortgage, deed of trust, or other indebtedness secured by lien. (2024-44, s. 1.)

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

It is the intent of this Article that neither the State nor any local government shall use public funds to fund or repay any C-PACE assessment. Nothing in this Article shall be interpreted as authorizing a local government to pledge, offer, or encumber its full faith and credit, and no local government shall pledge, offer, or encumber its full faith and credit under this Article. (2024-44, s. 1.)

§ 160A-239.21. Purchases and contracts.

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

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

- (2) Contract directly, including through lease, power purchase agreement, or other service contract, for the related equipment and materials used in the installation or modification of a qualifying improvement. (2024-44, s. 1.)