

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

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SENATE BILL 802  
Commerce and Insurance Committee Substitute Adopted 5/28/24

Short Title: C-PACE Program.

(Public)

Sponsors:

Referred to:

May 6, 2024

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 AND TO AMEND ARTICLE 8 OF  
8 CHAPTER 143 OF THE GENERAL STATUTES TO MODIFY THE REQUIREMENTS  
9 TO BE CERTIFIED AS A MINORITY BUSINESS OR HISTORICALLY  
10 UNDERUTILIZED BUSINESS.

11 The General Assembly of North Carolina enacts:

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

14 "Article 10B.

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

16 **"§ 160A-239.11. Purpose; findings.**

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

34 **"§ 160A-239.12. Definitions.**

35 The following definitions apply in this Article:



\* S 8 0 2 - V - 2 \*

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

1 quality improvement, energy storage, and microgrids and other  
2 resilience projects.

3 c. Renewable energy measure. – (i) A solar electric, solar thermal, wind,  
4 hydropower, geothermal, electric vehicle charging station, or ocean  
5 current or wave energy resource, (ii) a biomass resource, including  
6 agricultural waste, animal waste, wood waste, spent pulping liquors,  
7 combustible residues, combustible liquids, combustible gases, energy  
8 crops, or landfill methane, (iii) waste heat derived from a renewable  
9 energy resource and used to produce electricity or useful, measurable  
10 thermal energy at a retail electric customer's facility, or (iv) hydrogen  
11 derived from a renewable energy resource. For purposes of this  
12 sub-subdivision, the term "renewable energy measure" does not  
13 include peat or a fossil fuel.

14 d. Water conservation measure. – An equipment, physical component, or  
15 program change implemented to decrease water consumption or  
16 demand or to address safe drinking water.

17 (15) Statewide administrator. – The Economic Development Partnership of North  
18 Carolina.

19 **"§ 160A-239.13. Statewide C-PACE Program – authorization.**

20 (a) The State authorizes a statewide C-PACE Program in which any local government  
21 may participate.

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

24 **"§ 160A-239.14. Statewide C-PACE Program – administration.**

25 (a) In the administration of the C-PACE Program, the statewide administrator shall do  
26 the following:

27 (1) Prepare a C-PACE toolkit in consultation with local governments and the  
28 program sponsor prior to accepting applications for C-PACE financing, which  
29 shall include, at a minimum, all of the following:

30 a. A form of assessment agreement to be used between a local  
31 government and property owner specifying the terms of the C-PACE  
32 assessment.

33 b. A form of notice of C-PACE assessment that identifies the qualified  
34 commercial property subject to the C-PACE assessment and the  
35 property owner consenting to the C-PACE assessment.

36 c. A form of assignment of the C-PACE lien from the local government  
37 to the capital provider that cross-references the registry book and page  
38 number of the notice C-PACE assessment giving rise to the lien.

39 d. A form of consent to a C-PACE assessment by the holder of a  
40 mortgage, deed of trust, or other lien upon the qualifying commercial  
41 property.

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

45 (2) Impose fees to offset the actual and reasonable costs of administering the  
46 C-PACE Program, including:

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

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

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

1           (4) A statement identifying the local government department or employee that  
2           shall, upon receipt of an approved project application for C-PACE financing  
3           within its jurisdictional boundaries from the statewide administrator, execute  
4           the documents included in G.S. 160A-239.14(a)(1)a., b., and c. on behalf of  
5           the local government.

6           (5) A statement that the local government shall be reimbursed by the statewide  
7           administrator for the actual and reasonable costs associated with the  
8           performance of the duties described in subdivision (4) of this subsection.

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

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

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

20           **"§ 160A-239.16. Immunity and foreclosure process.**

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

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

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

29           (d) Enforcement of a delinquent C-PACE assessment payment by the capital provider  
30           shall be in the manner of the foreclosure of a deed of trust as provided in Article 2A of Chapter  
31           45 of the General Statutes, except that C-PACE assessment payments not yet billed or due may  
32           not be accelerated or extinguished by foreclosure of the delinquent assessment payment or  
33           payments. Any outstanding or delinquent State, local, or federal taxes or liens at the time of the  
34           foreclosure proceeding shall be satisfied first, but the C-PACE lien shall be superior to all other  
35           liens on the property from the date on which the notice of the C-PACE assessment was recorded  
36           until the C-PACE assessment, interest, penalties, and charges accrued or accruing are paid.

37           **"§ 160A-239.17. C-PACE assessment and lien.**

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

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

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

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

49           (4) For C-PACE assessments for leaseholds, the C-PACE assessment may be  
50           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.

**"§ 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 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.

**"§ 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.

**"§ 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.

**"§ 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."

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

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

- (1) No debtor's exemption shall be allowed.
- (2) At least 30 days prior to the day fixed for the sale, the sheriff shall send notice by registered or certified mail, return receipt requested, to the taxpayer at the

1 taxpayer's last known address, in lieu of personal service, and to all lienholders  
 2 of record. If within 10 days following the mailing of a notice, a return receipt  
 3 has not been received by the sheriff indicating receipt of the notice, then the  
 4 sheriff shall make additional efforts to locate and notify the taxpayer, if not  
 5 yet notified, and all unnotified lienholders of record of the sale under  
 6 execution in accordance with subdivision (4) of subsection (c) of this section.

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

10 (4) In any advertisement or posted notice of sale under execution, the sheriff may  
 11 (and at the request of the governing body shall) combine the advertisements  
 12 or notices for properties to be sold under executions against the properties of  
 13 different taxpayers in favor of the same taxing unit or group of units; however,  
 14 the property included in each judgment shall be separately described and the  
 15 name of the taxpayer specified in connection with each property.

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

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

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

25 (1) Taxes adjudged to be liens in favor of the plaintiff, other than taxes the amount  
 26 of which has not been definitely determined, together with penalties, interest,  
 27 and costs.

28 (2) Taxes adjudged to be liens in favor of other taxing units, other than taxes the  
 29 amount of which has not yet been definitely determined, if those taxes have  
 30 been alleged in answers filed by the other taxing units, together with penalties,  
 31 interest, and costs.

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

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

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

47 **SECTION 5.** G.S. 143-128.2(g) reads as rewritten:

48 "(g) As used in this section:

49 (1) The term "minority business" means either of the following:

50 ...

1                   b.     An Employee Stock Ownership Plan company in which at least  
2                             fifty-one percent (51%) of the ~~stock is owned by one or more plan~~  
3                             participants are minority persons or socially and economically  
4                             disadvantaged individuals.

5                   ...."

6                   **SECTION 6.** G.S. 143-128.4(a) reads as rewritten:

7                   "(a)    As used in this Chapter, the term "historically underutilized business" means either of  
8                   the following:

9                   ...

10                  (2)    An Employee Stock Ownership Plan company in which at least fifty-one  
11                             percent (51%) of the ~~stock is owned by one or more persons who plan~~  
12                             participants are members of at least one of the groups set forth in subsection  
13                             (b) of this section. An ESOP company applying for certification as a  
14                             historically underutilized business shall provide an attestation that it meets the  
15                             requirements of this subdivision together with such documentation supporting  
16                             the attestation as may be required by the Secretary."

17                  **SECTION 7.** This act becomes effective July 1, 2024.