

North Carolina Building Performance Association – 2017 SB493 Draft C-PACE Bill Language

Contact NCBPA's Ryan Miller with questions or comments at Ryan@BuildingNC.org or 919-521-3385

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

S D SENATE BILL DRS15098-LMf-74* (03/15)

Short Title: C-PACE Program. (Public)

Sponsors: Senators Tucker and Gunn (Primary Sponsors).

Referred to: *DRS15098-LMf-74*

A BILL TO BE ENTITLED AN ACT AUTHORIZING CITIES AND COUNTIES TO PARTICIPATE IN COMMERCIAL PROPERTY ASSESSED CAPITAL EXPENDITURES (C-PACE) TO ALLOW PROPERTY OWNERS TO VOLUNTARILY AGREE TO ASSESSMENTS TO FINANCE UPGRADES OR IMPROVEMENTS TO THEIR REAL PROPERTY. The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended by adding the following new language to section 160A-216 and by adding a new Article to read as follows: "Article 10B. "Commercial Property Assessed Capital Expenditures (C-PACE)."

§ 160A-216. Authority to make special assessments.

Any city is authorized to make special assessments against benefited property within its corporate limits for:

- . (1) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets;
- . (2) Constructing, reconstructing, paving, widening, and otherwise building or improving sidewalks in any public street;
- . (3) Constructing, reconstructing, extending, and otherwise building or improving water systems;
- . (4) Constructing, reconstructing, extending, or otherwise building or improving sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems;
- . (5) Constructing, reconstructing, extending, and otherwise building or improving storm sewer and drainage systems.
- . **(6) Individual property improvements under the C-PACE Act, consistent with sections 160A-239.10 to 160A-230.19.**

§ 160A-239.10. Commercial Property Assessed Capital Expenditures (C-PACE) Act. Sections 160A-239.10 to 160A-239.19 is the North Carolina Commercial Property Assessed Capital Expenditures (C-PACE) Act.

§ 160A-239.11. Legislative Findings. The General Assembly of North Carolina finds that authorizing counties and cities to develop and implement C-PACE programs is necessary to:

- (1) increase the reliability of energy resources;
- (2) mitigate risks identified in the state's Enhanced Hazard Mitigation Plan and the state's Energy Assurance Plan;
- (3) facilitate economic growth, job creation and expansion of business and industry opportunities;
- (4) support the development of a reliable and adequate supply of energy for North Carolina that is secure, stable and predictable;
- (5) provide for the most efficient use of existing gas and electric resources;
- (6) provide additional long-term, fixed-rate financing options for building owners to implement cost-effective improvements to properties, where such financing runs with the property to align long-term operational savings with reduced financing payments, and

- (7) ensure consumer protections through proper disclosure of C-PACE financing risks and benefits, and through C-PACE programmatic oversight, and
- (8) protect the interest of existing mortgage lienholders by requiring written acknowledgement by all current lienholders and application by all current titleholders.

§ 160A-239.12. Definitions. (a) The following definitions apply in this Article:

(1) **Assessment.** – A charge against real property belonging to an owner within the boundaries of a local government unit that has adopted a C-PACE program pursuant to this Article. The assessment must be made only upon qualifying real property located within the boundaries of participating local government unit. An assessment imposed under this Article shall remain valid and enforceable even if there is a later sale or transfer of the property or a part of the property. The rates of assessment within a participating local government unit do not have to be uniform.

(2) **Commercial Property Assessed Capital Expenditures (C-PACE).** – The financing or refinancing of building and property improvements through voluntary petition for special assessment by the property owner(s).

(3) **Capital Provider.** – A bank, credit union, municipality or other financing institution that provides capital for building and property upgrades or improvements through a C-PACE program.

(4) **C-PACE program.** – The program established by the governing body of a local government unit to administer building and property upgrades or improvements financed or refinanced through property tax assessments. The program may be administered by the governing body or a third party that will establish regulatory standards and oversight of the financial institutions providing capital for the C-PACE projects.

(5) **Local government unit.** – A city or county.

(6) **Property owner.** – A person whose name appears on county tax records as the owner of qualifying real estate and who voluntarily consents to an assessment against the qualifying real property to finance building upgrades or improvements.

(7) **Qualifying real property.** – A new or existing building or property, including, but not limited to, commercial, industrial, agricultural, nonprofit-owned buildings and multifamily dwellings consisting of five or more units. Qualifying real property does not include single-family residential properties of one to four units.

(8) **Qualifying improvements.** – Eligible improvements that improve the health, safety, energy usage, performance, environmental impact, or other qualifying characteristics of a building or property. Eligible improvements must meet the qualifications of 160A-239.16 within this Act.

§ 160A-239.13. Administration. A local government unit may, by ordinance, establish a C-PACE program for the purpose of promoting, encouraging, and facilitating building and property upgrades or improvements within the unit's territorial jurisdiction. Two or more local government units may jointly establish a C-PACE program by entering into a joint agreement to create a C-PACE program and adopting an ordinance that provides each governing body shall participate in the C-PACE program. A local government unit may contract with a private third-party organization to administer consumer advertising, contractor recruitment and other non-loan/lien servicing aspects of the C-PACE program in one or more participating local government units. In the case of property owner nonpayment, a local government unit must retain all rights and responsibilities for collection, foreclosure and/or tax forfeiture, and a local government unit must not transfer any such foreclosure and/or tax forfeiture rights to a non-governmental entity.

§ 160A-239.14. No guarantee of debt. By authorizing a voluntary special assessment under this Act, a local government unit does not provide any guarantee the property owner's obligation to repay the special assessment. The property owner's obligation to pay does not create a credit or debt obligation for the local government entity collecting the property tax assessment. A local government unit is not required to obtain approval of the North Carolina Local Government Commission to authorize a C-PACE program or to issue financing for a C-PACE assessment, so long as no public financing is used in conjunction with the transaction.

§ 160A-239.15. Qualifying buildings and properties. (a) All of the following types of building and property are eligible for C-PACE financing:

- (1) Commercial buildings, including office buildings, retail buildings, restaurants, hospitality buildings, and hospitals.
- (2) Private institutional buildings including universities, colleges, and schools.
- (3) Industrial buildings, including manufacturing facilities, warehouses, and data centers.
- (4) Nonprofit buildings, including charitable offices and congregations and places of worship.
- (5) Multifamily residential buildings with five or more units.
- (6) Agricultural buildings and properties.

(b) Multiple building and property upgrades may be financed through C-PACE on one or more properties that do not have to be contiguous but must be physically located within the boundary of participating local government unit or units.

(c) A participating property must receive a benchmarking survey, energy audit, feasibility study, or other review performed by a trained, certified, or licensed third party of the qualifying real property considered for building and property upgrades or improvements before C-PACE financing is provided. At a minimum, the property must:

- (1) Determine whether the requested building and property upgrades or improvements will improve the overall functionality and extend the lifespan of the building or property, and
- (2) Provide an estimate of the financial savings or earnings from the proposed building or property upgrades or improvements, including an evaluation of whether the individual measures are appropriately sized for the specific use contemplated.

(d) The C-PACE financing agreement must specify the building and property improvements to be completed and the contractor responsible for implementation of the building and property improvements. Property owners receiving C-PACE financing must provide written verification of completed project improvements to the participating local government unit to ensure that realtors, appraisers, and lenders have clear, accurate, and timely access to information on C-PACE liens.

(e) Qualifying real property must be current on property tax and assessment payments and shall not be encumbered by any involuntary liens, default judgments, or judgments.

(f) The local government unit's C-PACE program guidelines must ensure compliance with minimum property owner protection guidelines, and that such consumer protections are implemented and verified.

§ 160A-239.16. Qualifying improvements. (a) Participating local governments must establish minimum requirements for the cost-effectiveness of qualified accounting for all programmatic costs, fees and interest payments over the term of the financing. Capital Providers must comply with all cost-effectiveness requirements, and local governments shall not approve any C-PACE assessment for projects that do not meet such requirements.

(b) Qualifying improvements must be permanently affixed to the property or building and shall not be removed from the property or building if property is sold or transferred before the special assessment is fully satisfied. Property improvements must meet all applicable safety, performance, interconnection, and reliability standards established by the local government unit, the Public Service Commission of North Carolina, the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, Underwriters Laboratories, and the Federal Energy Regulatory Commission.

(c) Qualifying improvements must improve the health and safety, energy efficiency, renewable energy on-site generation or storage, water conservation, durability, or resiliency to weather and disaster damages of new or existing buildings and properties. Improvements providing only aesthetic or design value are not qualifying improvements. Eligible improvements include:

- (1) Equipment, devices or materials that decrease energy or water consumption or improve the efficiency, sustainability or durability of a building or property's resource usage, or any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the local government unit or third-party program administrator;
- (2) Energy storage equipment, devices or materials;
- (3) Renewable energy measures, including solar photovoltaic generation systems, solar thermal energy systems, geothermal heating and air systems, wind energy generation systems, hydroelectric energy generation systems, biomass or waste-to-energy generation systems and landfill methane gas capture systems;
- (4) Electric vehicle charging stations and installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.
- (5) Measures critical to North Carolina's weather-related property and building infrastructure: 47 a. Weather resiliency improvements, including roofing, siding, storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.
- (6) Flood damage prevention, including water runoff.
- (7) Drought tolerance improvement, including irrigation, and radon mitigation.

§ 160A-239.17. Requirements for property owners. (a) Participating property owners must be current on all existing mortgage and property tax obligations, and a local government unit or contract C-PACE program administrator must not approve C-PACE financing for any owner currently in foreclosure or with any current involuntary liens, defaults or judgments filed against the property.

(b) Participating property owners must demonstrate evidence of a title search for all existing mortgage lien-holders, and a local government unit must not approve C-PACE financing without the owner demonstrating that all current mortgage lien-holders have provided written, notarized acknowledgement stating (1) the mortgage lien-holder has notice of the proposed C-PACE lien and (2) the proposed C-PACE lien will not constitute a default under the terms of the existing mortgage.

(c) Property owners must demonstrate their ability to pay the C-PACE assessment for the term of the lien.

(d) A local government unit or contract C-PACE program administrator must require that a participating property owner comply with all historical preservation and/or architectural review boards with jurisdiction over the qualifying property.

§ 160A-239.18. Assessment financing. (a) Before approving a voluntary petition for C-PACE financing under this Article, a local government unit must receive an executed, written application for C-PACE financing by owner of qualifying property, with such applications stating, at a minimum: (1) the specific property or properties; (2) the qualifying improvements to be financed via C-PACE assessment, and (3) clear acknowledgement by the mortgage lien-holder of notice of the proposed C-PACE lien and that such proposed lien will not constitute a default under the terms of the existing mortgage.

(b) A C-PACE assessment may be capitalized from any funds legally available to the local government unit, so long as no new credit or debt obligation is incurred by the local government unit and no new commitment of public funds is made. Such funds may include taxable or tax-exempt revenue bonds, which may be issued only by a local government unit or other authority or local development corporation authorized by law for such purposes. A local government unit is not required to obtain approval of the North Carolina Local Government Commission to authorize a C-PACE program or to issue financing for a C-PACE assessment, so long as no public financing is used in conjunction with the transaction. A C-PACE assessment may also be capitalized from the purchase, by a Capital Provider, of an assignment from a local government unit of the right to receive the revenue of the special assessment, including any interest, fees, and penalties. Such purchase and assignment may be evidenced by any agreement, instrument, or document that, in the opinion of the local government unit, C-PACE program administrator, and Capital Provider, is adequate to support the purchase. A Capital Provider may, after the purchase of one or more assignments of special assessment revenue

pursuant this subsection, request that a local government unit or other authority or local development corporation issue taxable or tax-exempt revenue bonds, secured by a pledge of the revenue to which the Capital Provider is entitled to under one or more assignments from one or more local government units.

(c) A local government unit may approve a C-PACE assessment for up to one hundred percent (100%) of the unpaid costs of the qualifying upgrades or improvements. These costs may include the following: (i) the costs of the equipment and technologies for property upgrades or improvements; (ii) interest expenses, (iii) financing and origination fees required by the Capital Provider and/or the C-PACE program administrator, and (iv) related third-party costs, including architectural, engineering, and legal costs. The sum of all mortgages and the C-PACE lien must not exceed ninety-five percent (95%) of the total assessed property value.

(d) A local government unit must restrict the term of the assessment to no longer than the weighted average of the useful life of the property improvements. A local government unit must not approve a C-PACE assessment with a term more than 25 years. If the qualifying real property is sold, liability for assessments related to the financing of property improvements shall remain with the qualifying real property, unless the purchaser of the property elects to satisfy the remaining lien at the time of purchase.

(e) A local government unit may contract with one or more Capital Providers through a private selection or bidding process in order to provide financing to qualifying real properties. Capital Providers must demonstrate to the local government unit that they meet all relevant local, state and federal laws and regulations for non-bank lending entities as well as standards for Lien to Value, Loan to Value, Combined Loan to Value and Payment to Value established by the local governing. Capital Providers may provide financing to qualifying real properties through either the purchase of taxable or tax-exempt bonds, or the purchase of an assignment, by the local government unit, of all special assessment revenue paid by the qualifying real property owner. A series of two or more assignments of special assessment revenue may, after the purchase of such assignments by a Capital Provider, be converted into one or more taxable or tax-exempt bond issuances by pledging all such special assessment revenue to a bond trustee. The Office of the North Carolina Attorney General shall have authority to investigate fraudulent acts of any C-PACE Capital Provider, and may avail itself of any remedies under the law.

§ 160A-239.19. Liens. (a) The special assessment levied, including any interest, fees, and penalties, shall constitute a lien against the qualifying real property, and the application and local government unit resolution of approval must be filed in the office of the register of deeds of the county where the qualifying real property is located.

(b) If a mortgagee forecloses on the qualifying real property, the mortgagee shall serve all procedural documents of the foreclosure on the governing body of the local government unit that authorized the C-PACE lien as though it were a party to the foreclosure action. The C-PACE lien shall survive any judgment of foreclosure awarded to a mortgagee and must be disclosed to any subsequent purchaser prior to closing.

(c) A C-PACE lien shall not be due on the date of sale of the property, but may be paid early and, in such a case, the governing body may permit principal reductions. A Capital Provider may, in its discretion, charge prepayment penalties to lien borrowers in order to offer lower interest rates and greater capital availability. Such prepayment penalties must be fully disclosed in writing to the property owner prior to the local government unit approval of the C-PACE assessment. Upon payment in full of the assessments owed, the lien shall be released in the same manner as property tax liens.

(d) A C-PACE assessment shall be collected and enforced in the same manner other special assessments authorized under this Article. If a C-PACE assessment remains unpaid due to default, foreclosure, or bankruptcy of the property owner of the qualifying real property, assessment payments due in future years that are still outstanding shall not be accelerated, but shall not be extinguished. If a payment on qualifying real property subject to a C-PACE lien is delinquent for 30 days or more, the local government unit shall send written notice of the default to each mortgage lien-holder of record, and the local government unit shall pursue the late payment and reasonable delinquency fees in the same manner as with other property taxes or assessments, with respect to any penalties, fees and remedies and lien

priorities. Enforcement of delinquent C-PACE assessments shall be the exclusive right and responsibility of the local government unit.

SECTION 2. This act is effective when it becomes law.