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

Short Title: C-PACE Program.

(Public)

Sponsors: Senators Tucker and Gunn (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT AUTHORIZING CITIES AND COUNTIES TO PARTICIPATE IN COMMERCIAL
3 PROPERTY ASSESSED CAPITAL EXPENDITURES (C-PACE) TO ALLOW
4 PROPERTY OWNERS TO VOLUNTARILY AGREE TO ASSESSMENTS TO
5 FINANCE UPGRADES OR IMPROVEMENTS TO THEIR REAL PROPERTY.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 160A of the General Statutes is amended by adding a new
8 Article to read as follows:

9 "Article 10B.

10 "Commercial Property Assessed Capital Expenditures (C-PACE).

11 "**§ 160A-239.11. Definitions.**

12 (a) The following definitions apply in this Article:

- 13 (1) Assessment. – A charge against real property belonging to an owner within a
14 district created pursuant to this Article. The assessment must be made only
15 upon qualifying real property located within the district. An assessment
16 imposed under this Article shall remain valid and enforceable even if there is
17 a later sale or transfer of the property or a part of the property. The rates of
18 assessment within a district do not have to be uniform.
- 19 (2) Commercial Property Assessed Capital Expenditures (C-PACE). – The
20 financing of building and property upgrades and improvements through
21 property tax assessments.
- 22 (3) C-PACE financier. – A financing institution that provides capital for
23 building and property upgrades or improvements through a C-PACE
24 program.
- 25 (4) C-PACE program. – The program established by the governing body of a
26 local government unit to administer building and property upgrades or
27 improvements financed through property tax assessments. The program may
28 be administered by the governing body or a third party.
- 29 (5) District. – A C-PACE district formed pursuant to this Article by the
30 governing body of a local government unit. A district may be comprised of
31 noncontiguous parcels of land. A governing body may create more than one
32 C-PACE district, and districts may be separate, overlapping, or coterminous.
- 33 (6) Local government unit. – A city or county.
- 34 (7) Property owner. – A person whose name appears on county tax records as
35 the owner of qualifying real estate and who voluntarily consents to an



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1 assessment against the qualifying real property to finance building upgrades
2 or improvements.

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

8 (9) Qualifying upgrades or improvements. – Eligible upgrades or improvements
9 that improve the health, safety, energy usage, performance, environmental
10 impact, or other qualifying characteristics of a building or property.

11 **§ 160A-239.12. Administration.**

12 A local government unit may, by ordinance, establish a C-PACE program for the purpose
13 of promoting, encouraging, and facilitating building and property upgrades or improvements
14 within the unit's territorial jurisdiction. Two or more governing bodies may jointly establish a
15 C-PACE program by entering into a joint agreement to create a C-PACE district and adopting
16 an ordinance that provides each governing body shall participate in the C-PACE program. A
17 governing body or C-PACE district may contract with a nonprofit, not-for-profit, public
18 university, or private third party to administer the C-PACE program in one or more C-PACE
19 districts. A governing body is not required to obtain the approval of the Local Government
20 Commission for C-PACE assessments.

21 **§ 160A-239.13. Qualifying buildings and property.**

22 (a) All of the following types of building and property are eligible for C-PACE
23 financing:

24 (1) Commercial buildings, including office buildings, retail buildings,
25 restaurants, hospitality buildings, and hospitals.

26 (2) Institutional buildings, including public and private universities, community
27 colleges, and schools.

28 (3) Industrial buildings, including manufacturing facilities, warehouses, and data
29 centers.

30 (4) Nonprofit buildings, including charitable offices and congregations and
31 places of worship.

32 (5) Multifamily residential buildings with five or more units.

33 (6) Agricultural buildings and properties.

34 (b) Property in a C-PACE district does not have to be contiguous. The governing body
35 of a local government unit that created a C-PACE district may, by resolution, do any of the
36 following:

37 (1) Add the property of any owner who voluntarily executed a written
38 agreement with members of the C-PACE district consenting to the inclusion
39 of their property in the district and participation in the C-PACE program.

40 (2) Remove the property of any owner who has satisfied their property tax
41 assessment obligations under the C-PACE program.

42 (3) Delegate to the C-PACE program administration the authority to add new
43 properties to the C-PACE district as long as the property qualifies under the
44 qualifications adopted by the governing body.

45 (c) The governing body shall, in establishing guidelines for the C-PACE district,
46 include a provision that requires that the owner of qualifying real property shall be informed
47 that it is recommended that he or she have a benchmarking survey, energy audit, feasibility
48 study, or other review performed by a trained, certified, or licensed third party of the qualifying
49 real property considered for building and property upgrades or improvements before C-PACE
50 financing is provided. The survey should do the following:

1 (1) Determine whether the requested building and property upgrades or
2 improvements will improve the overall functionality and lifespan of the
3 building or property.

4 (2) Provide an estimate of the financial savings or earnings from the proposed
5 building or property upgrades or improvements, including an evaluation of
6 whether the individual measures are appropriately sized for the specific use
7 contemplated.

8 (d) The agreement between the C-PACE district and owner of qualifying real property
9 shall specify the building and property upgrades or improvements to be completed and the
10 contractor who shall be responsible for completion of the building and property upgrades or
11 improvements. If a survey was conducted under subsection (c) of this section, the agreement
12 shall include the specific items from the survey that shall be completed. Documentation
13 verifying the completion of building and property upgrades or improvements shall be publicly
14 available to ensure that realtors, appraisers, and lenders have clear, accurate, and timely access
15 to information on C-PACE liens.

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

18 (f) The governing body shall, in establishing guidelines for the C-PACE district,
19 require that minimum building and property owner protection guidelines are implemented and
20 verified in C-PACE programs.

21 **"§ 160A-239.14. Qualifying upgrades and improvements.**

22 (a) Qualifying upgrades and improvements must improve the health and safety, energy
23 efficiency, renewable energy on-site generation or storage, water conservation, durability, or
24 resiliency to weather and disaster damages of new or existing buildings and properties.
25 Upgrades providing only aesthetic or design improvements shall not qualify as qualifying
26 upgrades and improvements. Eligible upgrades and improvements include the following:

27 (1) Renewable energy measures:

28 a. Solar photovoltaic generation systems.

29 b. Geothermal heating and air systems.

30 c. Wind energy generation systems.

31 d. Hydroelectric energy generation systems.

32 e. Electric vehicle charging stations.

33 f. Biomass or waste-to-energy generation systems.

34 g. Energy storage systems.

35 (2) Performance, energy efficiency, and deferred maintenance improvements,
36 including new installations and existing repairs or upgrades:

37 a. Heating, air, and ventilation systems.

38 b. Windows.

39 c. Roofing.

40 d. Lighting.

41 e. Building envelope sealing, tightness, and barrier measures.

42 f. Water efficiency, recycling, and conservation.

43 g. Refrigeration systems.

44 h. Building automation and control systems.

45 (3) Measures critical to North Carolina's weather-related property and building
46 infrastructure:

47 a. Weather resiliency improvements, including roofing, windows, and
48 building envelope.

49 b. Flood damage prevention, including water runoff.

50 c. Drought tolerance improvement, including irrigation.

51 d. Radon mitigation.

1 (b) Property upgrades and improvements shall be permanently affixed to the property or
2 building and shall not be removed from the property or building if the ownership of the
3 property or building changes.

4 **"§ 160A-239.15. Requirements for property owners.**

5 (a) In order to participate in the C-PACE program, a property owner shall provide
6 documentation that any historical or architectural review boards with jurisdiction over the
7 qualifying real property have approved the requested building or property upgrades or
8 improvements.

9 (b) If the qualifying real property is subject to a mortgage, the property owner must
10 obtain written consent from the secured mortgage holder before participating in the C-PACE
11 program. A property owner is not eligible to participate in the C-PACE program if the property
12 is currently in foreclosure or has current involuntary liens, defaults, or judgments.

13 (c) A C-PACE financier may impose minimum requirements on property owners to
14 demonstrate their ability to pay the voluntarily imposed assessments for the life of the lien
15 amount.

16 **"§ 160A-239.16. Program administration.**

17 (a) The C-PACE program administrator shall establish and manage contractor
18 registration and shall develop quality assurance guidelines. In selecting a contractor to perform
19 qualifying upgrades or improvements, the property owner shall select from a list of contractors
20 registered with the C-PACE program administrator. The contractor shall be responsible for
21 remediating any upgrades or improvements that are determined to have been done improperly or
22 to be inappropriately sized for the intended use. Each C-PACE program administrator shall be
23 responsible for handling complaints and resolution procedures involving registered contractors
24 and property owners and shall make available for public inspection complaints involving
25 contractors registered with the program and the manner in which the complaints were resolved.

26 (b) Upon completion of the qualifying upgrades or improvements, the C-PACE
27 program administrator shall recommend that the property owner receive a benchmarking
28 survey, energy audit, feasibility study, or other review by a trained, certified, or licensed third
29 party to evaluate how the qualifying upgrades or improvements met expectations.

30 **"§ 160A-239.17. Assessment financing.**

31 (a) A C-PACE financier shall have authority to impose property tax assessments on
32 qualifying real property when a property owner has voluntarily executed a written agreement
33 with the governing body of the local government unit that created the C-PACE district
34 consenting to (i) undertake building or property upgrades or improvements and (ii) have a
35 C-PACE assessment imposed on the property owner's property. The financing agreement
36 between the C-PACE financier and property owner shall be in writing.

37 (b) A written lender consent form for each existing secured mortgage that is signed by
38 an authorized mortgage holder representative authorizing the C-PACE lien must be provided to
39 the C-PACE financier. The form must be filed with, and as an attachment to, the C-PACE lien
40 in the office of the register of deeds of the county in which the qualifying real property is
41 located. The lender consent form shall include all of the following information:

42 (1) The name and address of each qualifying real property owner.

43 (2) The name and principal address of each mortgagee.

44 (3) The address of the qualifying real property and a description of the property.

45 (4) The name of the local government unit responsible for imposing the
46 assessment under the C-PACE program.

47 (5) The proposed lien amount and payment terms.

48 (6) The estimated financial benefits of the proposed upgrades or improvements.

49 (7) General information about the C-PACE financier and their C-PACE program.

50 (8) A form or language that the mortgage holder shall send back to the C-PACE
51 financier authorizing the C-PACE lien.

1 (c) A C-PACE program may access project capital from any funds legally available to
2 the local government unit whose governing body created the C-PACE district, including
3 taxable or tax-exempt, if eligible, municipal bonds, in conjunction with any source of credit
4 enhancement. Revenue bonds secured solely by C-PACE assessment payments must be issued
5 by a local government unit or an authorized authority or local development corporation. The
6 provisions of this section shall have no effect on (i) existing laws related to the issuance of
7 revenue bonds by cities participating in a C-PACE program or by any other qualified issuer of
8 revenue bonds, provided that the revenue bonds shall be secured solely by assessments
9 collected from qualifying real property, the owner of which has voluntarily entered into
10 assessment contracts and has undertaken property upgrades or improvements projects, or (ii)
11 any other funds lawfully pledged as security.

12 (d) A local government unit may offer C-PACE capital by establishing a special
13 C-PACE benefit district that allows it to impose, collect, and enforce assessments or charges.

14 (e) The assessment under the C-PACE program shall include, but not be limited to, an
15 amount of up to one hundred percent (100%) of the unpaid costs of the qualifying upgrades or
16 improvements. These costs include the following: (i) the costs of the equipment and
17 technologies for property upgrades or improvements, (ii) interest expenses, (iii) the fees of the
18 property owner or C-PACE financier, (iv) third-party costs, including architectural,
19 engineering, and legal costs, and (v) any other costs associated with the administration of the
20 C-PACE district or the completion of C-PACE financing. The sum of the mortgage and the
21 C-PACE lien should not exceed ninety-five percent (95%) of the total assessed property value,
22 unless otherwise provided by the governing body by ordinance.

23 (f) The term of the assessment shall not exceed the weighted average of the useful life
24 of the property upgrades or improvements and in no case shall be for more than 25 years from
25 the date of the initial assessment. If the qualifying real property is sold, liability for assessments
26 related to the financing of property upgrades or improvements shall remain with the qualifying
27 real property.

28 (g) A local government unit may contract with a variety of C-PACE financiers through
29 open and competitive bidding in order to provide financing to qualifying real property in the
30 C-PACE district.

31 (h) To qualify for financing under this Article, property upgrades or improvements shall
32 meet all applicable safety, performance, interconnection, and reliability standards established
33 by the governing body that created the C-PACE district, the Public Service Commission of
34 North Carolina, the National Electrical Code, the National Electrical Safety Code, the Institute
35 of Electrical and Electronics Engineers, Underwriters Laboratories, and the Federal Energy
36 Regulatory Commission.

37 **"§ 160A-239.18. Liens.**

38 (a) The property tax assessment levied, including any interest, fees, and penalties, shall
39 constitute a C-PACE lien against the qualifying real property if the lender consent form is filed
40 as provided in G.S. 160A-239.17(b). The C-PACE lien related only to the portion of the
41 currently due and payable and delinquent assessments currently in arrears shall have priority
42 over any mortgage, provided the C-PACE lien is perfected by filing a written financing
43 agreement in the office of the register of deeds of the county where the qualifying real property
44 is located.

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

50 (c) If provided for in a written agreement, the governing body of a local government
51 unit participating in a C-PACE program may assign to the C-PACE financier any and all liens

1 filed by the unit's tax collector. The assignee of the liens shall have and possess the same
2 powers and rights in law or equity as the C-PACE district and the participating unit and its tax
3 collector would have had if the lien had not been assigned with regard to the priority of the lien,
4 accrual of interest, and fees and expenses of collection. The costs and reasonable attorneys' fees
5 incurred by the assignee either as a result of any foreclosure action or other legal proceeding
6 brought pursuant to this Article and directly related to the proceeding shall be levied against
7 each person having title to any real property subject to the proceedings. The costs and fees may
8 be collected by the assignee at any time after demand for payment has been made. A local
9 government unit may charge the C-PACE financier a service fee to cover the unit's
10 administrative costs related to imposing the assessment requested by the property owner for
11 qualifying upgrades or improvements.

12 (d) A C-PACE lien shall not be due on the date of sale of the property, but may be paid
13 early and, in such a case, the governing body may permit principal reductions. A C-PACE
14 financier may, in its discretion, charge prepayment penalties to lien holders. Upon payment in
15 full of the assessments owed, the lien shall be released in the same manner as property tax
16 liens.

17 (e) The equipment included in a C-PACE lien may be removed if it becomes obsolete
18 or damaged. However, if the equipment is removed for obsolescence or damage, the assessment
19 for the equipment and any interest, fees, and penalties shall remain a lien against the qualifying
20 real property until paid in full.

21 (f) If a C-PACE assessment is not paid when due, the lien may be enforced by the local
22 government unit or its C-PACE administrator in the same manner as property taxes on the
23 qualifying real property. If a C-PACE assessment becomes delinquent due to default,
24 foreclosure, or bankruptcy of the property owner of the qualifying real property, assessment
25 payments due in future years that are still outstanding shall not be accelerated, but shall not be
26 extinguished. If a payment on qualifying real property subject to a C-PACE lien is in default
27 for 30 days or more, the governing body or its C-PACE administrator shall send written notice
28 of the default to each mortgagee of record."

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