

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

FILED SENATE  
Mar 25, 2021  
S.B. 358  
PRINCIPAL CLERK

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SENATE BILL DRS45196-LMf-13C

Short Title: C-PACE Program.

(Public)

Sponsors: Senators Johnson, Lazzara, and Woodard (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 as follows:

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 commercial property assessed clean energy program that local governments may  
17 voluntarily join to allow free and willing owners of commercial, industrial, agricultural,  
18 nonprofit, and multifamily residential properties with five or more dwelling units to obtain  
19 low-cost, long-term financing for qualifying improvements, including energy efficiency, water  
20 conservation, renewable energy, and resilience projects, secured by an assessment and lien  
21 authorized by this Article. The State finds that a valid public purpose exists because the use of a  
22 commercial property assessed clean energy program creates an additional financing mechanism  
23 for property owners to use private funds to finance renewable energy, energy efficiency, and  
24 resilience improvements to their eligible property, thereby driving economic development by  
25 creating a diversity of jobs in the clean energy and resilience sectors of the economy. The  
26 assessment requires minimal upfront costs and provides a more accessible financial mechanism  
27 to fund improvements that will increase the tax value of the affected properties. C-PACE  
28 improvements allow property owners to save on their utility bills because the improvements lead  
29 to energy or utility savings. C-PACE improvements will result in improved indoor air quality or  
30 increased resilience.

31 "**§ 160A-239.12. Definitions.**

32 The following definitions apply in this Article:

33 (1) Administrator. – The person or agency selected by the North Carolina State  
34 Energy Office to administer the C-PACE program as provided in this Article.



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- 1           (2)   Capital provider. – A private entity, or the private entity's designee, successor,  
2           and assigns, that makes or funds C-PACE financing improvements under this  
3           Article.
- 4           (3)   Commercial property. – Privately owned commercial, industrial, or  
5           agricultural real property or privately owned residential real property  
6           consisting of five or more dwelling units. This term includes property owned  
7           by nonprofit, charitable, or religious organizations.
- 8           (4)   Commercial property assessed capital expenditure program (C-PACE). – An  
9           assessment voluntarily imposed on an eligible property owner to pay for the  
10           costs of eligible qualified improvements.
- 11           (5)   Financing agreement. – The contract in which a property owner agrees to  
12           repay a capital provider for the C-PACE financing provided including, but not  
13           limited to, the details of any finance charges, fees, debt servicing, accrual of  
14           interest and penalties, and any terms relating to the treatment of prepayment  
15           and partial payment, billing, collection, and enforcement of the C-PACE  
16           financing.
- 17           (6)   Local government. – Any county, city, or public authority.
- 18           (7)   C-PACE Toolkit. – A comprehensive document developed by the statewide  
19           administrator that describes the C-PACE program and establishes any  
20           appropriate guidelines, specifications, underwriting, and approval criteria, and  
21           any other application forms consistent with the administration of the program  
22           and not otherwise provided for in this Article.
- 23           (8)   Project application. – The application submitted to the C-PACE program to  
24           demonstrate that a proposed project qualifies for financing and an assessment  
25           and lien under this Article.
- 26           (9)   Property owner. – The owner or owners of a commercial property whose  
27           names are listed on the property title, duly recorded in the appropriate office  
28           of the register of deeds.
- 29           (10)   Qualified improvement. – A permanent improvement that is affixed to a  
30           qualified project and includes one or more of the following approved by the  
31           statewide administrator:
- 32           a.   Energy efficiency measure. – An equipment, physical, or program  
33           change implemented that results in less energy used to perform the  
34           same function. For purposes of this sub-subdivision, the term "energy  
35           efficiency measure" includes, but is not limited to, energy produced  
36           from a combined heat and power system that uses nonrenewable  
37           energy resources. The term does not include demand-side  
38           management.
- 39           b.   Increase resilience. – Includes, but is not limited to, storm retrofits,  
40           flood mitigation, stormwater management, wind resistance, energy  
41           storage, and microgrids, and other resilience projects.
- 42           c.   Renewable energy resource. – (i) A solar vehicle, solar thermal, wind,  
43           hydropower, geothermal, electric vehicle charging station, or ocean  
44           current or wave energy resource, (ii) a biomass resource, including  
45           agricultural waste, animal waste, wood waste, spent pulping liquors,  
46           combustible residues, combustible liquids, combustible gases, energy  
47           crops, or landfill methane, (iii) waste heat derived from a renewable  
48           energy resource and used to produce electricity or useful, measurable  
49           thermal energy at a retail electric customer's facility, or (iv) hydrogen  
50           derived from a renewable energy resource. For purposes of this

1 sub-subdivision, the term "renewable energy resource" does not  
2 include peat, a fossil fuel, or a nuclear energy resource.

3 d. Water conservation measure. – To decrease water consumption or  
4 demand or to address safe drinking water through the use of efficiency  
5 technologies, products, or activities that reduce or support the  
6 reduction of water consumption, allow for the reduction in demand, or  
7 reduce or eliminate lead from water which may be used for drinking  
8 or cooking.

9 (11) Qualified project. – A project approved by the statewide administrator which  
10 involves the installation or modification of a qualified improvement,  
11 including:

12 a. New and existing commercial properties.

13 b. New and existing multifamily properties of five or more units per  
14 dwelling.

15 c. New and existing nonprofit properties.

16 d. New and existing industrial properties.

17 e. New and existing agricultural properties.

18 (12) Program Sponsor. – The North Carolina State Energy Office, which shall be  
19 responsible for developing a process for selecting a statewide administrator  
20 and for oversight of the C-PACE program.

21 **"§ 160A-239.13. Statewide C-PACE Program – authorization.**

22 (a) The C-PACE program is a statewide program in which any local government may  
23 participate by allowing direct financing between private capital providers and property owners  
24 within its jurisdictional boundaries as the means to finance qualified projects. The direct  
25 financing shall be secured by placing a voluntary assessment and lien on the property, which  
26 shall be duly recorded in the office of the register of deeds in the county where the property is  
27 located.

28 (b) The North Carolina State Energy Office (hereinafter "Office") is hereby authorized  
29 to serve as the program administrator, and in that capacity shall be responsible for overseeing the  
30 C-PACE program. The Office shall develop a process for selecting a third-party program  
31 administrator who shall be responsible for accepting and approving applications for C-PACE  
32 financing and developing and promoting the program.

33 **"§ 160A-239.14. Statewide C-PACE program – administration.**

34 In the administration of the C-PACE program, the administrator shall do the following:

35 (1) Prepare a Program Toolkit prior to accepting applications for C-PACE  
36 financing.

37 (2) Prepare the following C-PACE documents, which shall be known as the  
38 "documentation set":

39 a. An assessment contract to be used by the program and property owner  
40 specifying the terms of the voluntary assessment to be recorded on the  
41 property.

42 b. A notice of assessment and C-PACE lien.

43 c. An assignment of notice of assessment and C-PACE lien between the  
44 local government and capital provider.

45 d. A consent form for the C-PACE assessment by the holder of the  
46 mortgage or deed of trust.

47 (3) Impose fees to offset the actual and reasonable costs of administering the  
48 C-PACE program, including:

49 a. An application fee not to exceed one hundred fifty dollars (\$150.00).

50 b. A processing fee assessed to the property owner whose application for  
51 C-PACE financing is approved, which shall be one percent (1%) of

- 1                   the total amount financed, but shall not be more than fifteen thousand  
2                   dollars (\$15,000).
- 3           (4)   Prescribe the form and manner of the application for financing, and establish  
4           the process for reviewing and evaluating applications. The following shall be  
5           provided or demonstrated:
- 6           a.   For an existing building: (i) where renewable energy, energy  
7           efficiency, or water conservation improvements are proposed, an  
8           energy analysis by a licensed engineering firm or engineer or another  
9           qualified professional listed in the Program Toolkit stating that the  
10           proposed qualified improvements will result in more efficient use or  
11           conservation of energy or water, the reduction of greenhouse gas  
12           emissions, or the addition of renewable sources of energy or water, or  
13           (ii) where resilience improvements are proposed, certification by a  
14           licensed engineer stating that the qualified improvements will result in  
15           improved resilience.
- 16           b.   For new construction, certification by a licensed engineering firm or  
17           engineer stating that the proposed qualified improvements will allow  
18           the project to meet the requirements of the current State building code.
- 19           c.   A qualified capital provider may certify to the program, in accordance  
20           with a process approved by the program, that the property owner and  
21           the project qualifies for financing under this Article, complies with the  
22           provisions of this Article, and complies with the Program Toolkit.
- 23           d.   Upon approval by the program, the program shall finalize the C-PACE  
24           documentation set and the local government shall execute the C-PACE  
25           assessment and lien with no faith or liability towards the debt. The  
26           program administrator shall be responsible for recording the  
27           documents, as prescribed in the Program Toolkit, in the county in  
28           which the property is located.
- 29           e.   The capital provider shall be solely responsible for all billing,  
30           collection, and enforcement of the special assessment and lien. Under  
31           this Article, delinquent installments shall incur interest and penalties  
32           as specified in the financing agreement between the property owner  
33           and capital provider. Enforcement of a delinquent installment shall be  
34           in the manner of a deed of trust under Article 2A of Chapter 45 of the  
35           General Statutes, except that assessments not yet due may not be  
36           accelerated or eliminated by foreclosure of the past due amounts of the  
37           lien. Any outstanding and delinquent State, local, and federal property  
38           taxes or liens at the time of the enforcement action shall be satisfied  
39           first.
- 40           f.   If enforcement action is taken against property on which there is a  
41           C-PACE lien placed by the capital provider or third-party  
42           administrator, foreclosure shall follow the same process as provided in  
43           Article 2A of Chapter 45 of the General Statutes. Any outstanding and  
44           delinquent State, local, and federal property taxes or liens at the time  
45           of the enforcement action shall be satisfied first, and the C-PACE lien  
46           shall be superior to all other liens on the property from the date on  
47           which notice of the C-PACE lien is recorded until the lien, interest,  
48           penalties, and charges accrued or accruing are paid; provided that the  
49           mortgage holder consent is obtained from existing mortgage holders  
50           on the property as provided in this Article.

- 1           (5)    Require any commercial property owner seeking C-PACE financing to certify  
2           that the applicant:  
3           a.       Is the legal owner of the benefited property, of which the title is not in  
4           dispute.  
5           b.       Is current on all mortgage payments and property taxes.  
6           c.       Is not insolvent or in bankruptcy proceedings.  
7           (6)    Record the C-PACE documentation set executed by the local government in  
8           the office of the register of deeds in the county in which the approved property  
9           is located. The administrator may delegate recording duties to the property  
10          owner and the capital provider.

11    **"§ 160A-239.15. Local government participation.**

12          (a)    A local government seeking to participate in the C-PACE program shall adopt a  
13          resolution which shall include all of the following:

- 14           (1)    A grant of authorization for the C-PACE program to operate within its  
15           jurisdictional boundaries and to offer C-PACE financing to willing and  
16           qualified property owners.  
17           (2)    The local government's intent to participate in the program and to execute and  
18           place voluntary C-PACE assessments and liens on properties in its  
19           jurisdictional boundaries to allow eligible and voluntary property owners to  
20           repay to private capital providers the financing for available qualified projects.  
21           (3)    A statement that the local government intends to (i) authorize direct financing  
22           between property owners and capital providers as the means to finance  
23           qualified projects and (ii) delegate billing, collection, and enforcement duties  
24           for the assessment and lien to capital providers.  
25           (4)    A statement identifying the local government department or employee that  
26           will, upon receipt of an approved application for C-PACE financing within its  
27           jurisdictional boundaries from the administrator, execute the C-PACE  
28           documentation set.  
29           (5)    A statement that the local government shall be reimbursed by the  
30           administrator or applicant for the costs associated with the performance of the  
31           activities described in subdivision (4) of this section.  
32           (6)    A description of the boundaries of the region where property owners are  
33           eligible.  
34           (7)    A statement of the time and place for a public hearing on the proposed  
35           program.

36          (b)    The governing body of the local government may, after conducting a public hearing  
37          on the proposed program, adopt a resolution providing that the local government is joining the  
38          C-PACE program.

39    **"§ 160A-239.16. Immunity and foreclosure process**

40          An assessment under this Article and the terms and conditions of the assessment shall be  
41          voluntarily agreed upon between the property owner, private capital provider, and administrator.  
42          Upon agreement of the terms, the local government shall consent to execute and place the  
43          assessment and lien on the property. Neither the State nor any participating local government, its  
44          officers, and employees shall be liable for any actions taken pursuant to this section. A local  
45          government shall not be responsible for any foreclosure duties related to the assessment on a  
46          property with eligible improvements. Foreclosure due to payments associated with the C-PACE  
47          assessment shall be the sole responsibility of the private capital provider or third-party  
48          administrator. If a foreclosure proceeding is undertaken involving property on which the  
49          C-PACE lien has been placed by a capital provider or third-party administrator, the proceeding  
50          shall be conducted as provided in Article 2A of Chapter 45 of the General Statutes. Any  
51          outstanding or delinquent State, local, or federal taxes or liens at the time of the foreclosure

1 proceeding shall be satisfied first, but the C-PACE lien shall be superior to all other liens on the  
2 property from the date on which the notice of the C-PACE lien was recorded until the C-PACE  
3 lien, interest, penalties, and charges accrued or accruing are paid; provided that the mortgage  
4 holder consent is obtained from existing mortgage holders on the property as described in  
5 G.S. 160A-239.15.

6 **"§ 160A-239.17. C-PACE assessment and lien.**

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

- 8 (1) The lien shall be inferior to all prior and subsequent State, local, and federal  
9 taxes or liens and superior to all other liens on the property from the date on  
10 which the notice of the C-PACE lien is recorded until the C-PACE lien,  
11 interest, penalties, and charges accrued or accruing are paid.
- 12 (2) The lien shall run with the land upon the sale or foreclosure of the property,  
13 and that portion of the assessment under the assessment contract that is not yet  
14 due may not be accelerated or eliminated by foreclosure of a property tax lien.
- 15 (3) A provision of a deed of trust, mortgage, or any other agreement between a  
16 lienholder and a property owner providing for the acceleration of any payment  
17 under a deed of trust, mortgage, or agreement solely as the result of entering  
18 into an agreement to finance an assessment is not enforceable; provided,  
19 however, a mortgage holder or loan servicer may increase the monthly amount  
20 held in escrow as may be required to annually pay the assessment.
- 21 (4) After the notice of special assessment is recorded, as provided in this Article,  
22 the lien may not be contested on the basis that the improvement is not a  
23 qualified improvement or the project is not a qualified project or for any  
24 procedural or substantive irregularities related to the financing.

25 **"§ 160A-239.18. Financing.**

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

- 28 (1) The cost of materials and labor necessary for the installation or modification  
29 of a qualified improvement.
- 30 (2) Permit fees.
- 31 (3) Inspection fees.
- 32 (4) Lender fees.
- 33 (5) Program application and administrative fees.
- 34 (6) Project development and engineering fees.
- 35 (7) Interest reserves.
- 36 (8) Capitalized interest, in an amount determined by the owner of the commercial  
37 property and the third-party providing financing under this Article.
- 38 (9) Any other fees or costs incurred by the property owner incident to the  
39 installation, modification, or improvement on a specific or pro rata basis, as  
40 determined by the local government.

41 (b) The term of the financing may not exceed the useful life of an improvement or the  
42 weighted average useful life of improvements where multiple improvements are approved.

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

46 (d) The capital provider shall be solely responsible for all billing, collection, and  
47 enforcement of the assessment and lien. Delinquent installments shall incur interest and penalties  
48 as specified in the financing agreement. Enforcement of a delinquent installment shall be in the  
49 manner of a deed of trust under Article 2A of Chapter 45 of the General Statutes, except that  
50 assessments that are not due may not be accelerated or eliminated by foreclosure of the past due  
51 amounts of the lien. Any outstanding and delinquent State, local, and federal property taxes or

1 liens at the time of the enforcement action shall be satisfied first, and the C-PACE lien shall be  
2 superior to all other liens on the property from the date on which the notice of the C-PACE lien  
3 is recorded until the C-PACE lien, interest, penalties, and charges accrued or accruing are paid;  
4 provided the mortgage holder's consent is obtained from existing mortgage holders on the  
5 property as provided in this Article.

6 **"§ 160A-239.19. Lender consent.**

7 Prior to entering into an assessment contract, the property owner must submit to the  
8 administrator a written statement, executed by each holder of the mortgage or deed of trust on  
9 the property securing indebtedness, that consents to the assessment and indicates that the  
10 assessment does not constitute an event of default under the terms of the mortgage or deed of  
11 trust.

12 **"§ 160A-239.20. Prohibition on use of public funds.**

13 A local government may not enforce any privately financed debt under this Article. Neither  
14 the State nor any local government may use public funds to fund or repay any loan between a  
15 capital provider and property owner. Nothing in this Article shall be interpreted as authorizing a  
16 local government to pledge, offer, or encumber its full faith, and no local government shall  
17 pledge, offer, or encumber its full faith and credit under this Article.

18 **"§ 160A-239.21. Purchases and contracts.**

19 The proposed arrangements for financing a qualified project may authorize the property  
20 owner to do any of the following:

- 21 (1) Directly purchase the related equipment and materials for the installation or  
22 modification of a qualified improvement.
- 23 (2) Contract directly, including through lease, power purchase agreement, or  
24 other service contract, for the related equipment and materials used in the  
25 installation or modification of a qualified improvement.

26 **"§ 160A-239.22. Participation not compulsory.**

27 A local government that participates in the C-PACE program shall not do either of the  
28 following:

- 29 (1) Make the issuance of any permit, license, or other authorization by the local  
30 government conditional upon the person entering into a written contract to  
31 repay the financing of a qualified project through special assessments under  
32 this Article.
- 33 (2) Otherwise compel a person who owns property within the local government's  
34 jurisdictional boundaries to enter into a written contract to repay the financing  
35 of a qualified project through special assessments.

36 **"§ 160A-239.23. Severability.**

37 If any provision of this Article or its application to any person or circumstance is held invalid,  
38 then the invalidity shall not affect other provisions or applications of the Article that can be given  
39 effect without the invalid provision or application, and to that end the provisions of this Article  
40 shall be severable."

41 **SECTION 2.** This act becomes effective July 1, 2021.