

SENATE BILL No. 51

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-9-44.

Synopsis: Commercial property assessed capital expenditure program. Authorizes counties, cities, and towns (local units) to adopt an ordinance for a commercial property assessed capital expenditure program (C-PACE program) and enter into an assessment contract with the owner or owners of commercial property to impose a voluntary C-PACE tax assessment and lien on an applicant's property as a means of assisting the applicant in obtaining financing of eligible clean energy improvements on the property. Defines an "eligible improvement". Requires the local unit to obtain written consent of each existing mortgage lienholder on the property stating that the lienholder does not object to the imposition of the C-PACE tax assessment. Requires certain provisions to be included in an assessment contract. Specifies the procedures for imposing the assessment, collection, enforcement, and the priority of any tax lien. Prohibits the local unit from issuing bonds secured by tax revenue from any special assessment and further specifies that a local unit shall have no financial obligation or liability for the payment of tax revenue from a special assessment, other than to transfer the proceeds to the financing provider for the improvements.

Effective: July 1, 2024.

Walker G

January 8, 2024, read first time and referred to Committee on Insurance and Financial Institutions.



Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

SENATE BILL No. 51



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 36-9-44 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2024]:
- 4 **Chapter 44. Commercial Property Assessed Capital**
- 5 **Expenditure Program**
- 6 **Sec. 1. As used in this chapter, "administrator" means the local**
- 7 **unit, an agency of a local unit, or a private third party designated**
- 8 **by the local unit to administer a program established under this**
- 9 **chapter.**
- 10 **Sec. 2. As used in this chapter, "assessment contract" means a**
- 11 **contract entered into between a local unit and a commercial**
- 12 **property owner in a district pursuant to a program established by**
- 13 **the local unit.**
- 14 **Sec. 3. As used in this chapter, "C-PACE assessment" means an**
- 15 **assessment and lien created pursuant to an assessment contract**
- 16 **under section 10 of this chapter.**
- 17 **Sec. 4. As used in this chapter, "district" means an assessment**



1 district designated by a local unit under section 10 of this chapter
2 in which a commercial property owner may apply to a local unit to
3 enter into an assessment contract.

4 Sec. 5. As used in this chapter, "eligible improvement" means
5 one (1) or more of the following projects, permanently affixed to
6 any new construction, renovation, or retrofitting of qualifying
7 commercial real property:

8 (1) Energy efficiency improvement projects, which include
9 materials, equipment, or devices that result in a decrease in
10 consumption of or demand for electricity or natural gas.

11 (2) Alternative energy projects, which include an energy
12 system that generates energy by use of low or zero-emissions
13 generation technology with substantial long term production,
14 including solar, wind, and geothermal resources, or fuel cell
15 equipment using an electrochemical process to generate
16 electricity and heat or biomass resources.

17 (3) Resiliency improvement projects, which include
18 improvements that increase the resilience of a property,
19 including flood mitigation, storm water management, energy
20 storage and microgrids, alternative vehicle charging
21 infrastructure, fire, wind, or seismic resistance, or inundation
22 adaptation.

23 (4) Water efficiency and safe drinking water improvement
24 projects, which include measures, equipment, or devices that
25 decrease the consumption of or demand for water, address
26 safe drinking water, or eliminate lead from water used for
27 drinking or cooking.

28 Sec. 6. As used in this chapter, "financing provider" means a
29 person or corporate entity and their successors or assigns that
30 provides financing or refinancing for the construction, installation,
31 or modification of an eligible improvement on real property.

32 Sec. 7. As used in this chapter, "local unit" means a county, city,
33 town, or other political subdivision.

34 Sec. 8. As used in this chapter, "program" means a commercial
35 property assessed capital expenditure program established by a
36 local unit under this chapter for the purpose of furthering
37 economic development, energy efficiency, reduction of water
38 consumption, improvement of safe drinking water, alternative
39 energy, and resiliency.

40 Sec. 9. As used in this chapter, "property" means commercial
41 real property and improvements, including:

42 (1) privately owned commercial, industrial, or agricultural



1 property;

2 (2) privately owned multi-family property consisting of five

3 (5) or more dwelling units;

4 (3) property owned by nonprofit, charitable, or religious
5 organizations; and

6 (4) a leasehold of property owned by a private entity or the
7 state or a local unit.

8 **Sec. 10. (a) The fiscal body of a local unit may adopt an
9 ordinance to establish a commercial property assessed capital
10 expenditure program and enter into assessment contracts with
11 owners of commercial property located in a district designated
12 under the program.**

13 **(b) An ordinance adopted under this section may designate:**

14 (1) all of the territory of the local unit as a district;

15 (2) one (1) or more specific geographic territories within the
16 local unit as a district in which a commercial property owner
17 may petition the local unit to enter into an assessment
18 contract; or

19 (3) a program administrator with authority to designate
20 geographic territories as a district.

21 **(c) If a local unit establishes a program under subsection (a),
22 upon application to the local unit, the local unit or its duly
23 delegated officer may enter into an assessment contract with the
24 owner or owners of record of commercial property located within
25 a district to impose a voluntary C-PACE assessment on the
26 applicant's property as a means of assisting the applicant in
27 obtaining financing of eligible improvements on the property.**

28 **(d) A petition submitted to the fiscal body of a local unit must
29 contain the signature of each owner of record of the property.**

30 **(e) Prior to entering into an assessment contract, the local unit
31 or its administrator must obtain from the property owner a written
32 consent of the holder of each existing mortgage lien on the
33 commercial property stating that the lienholder does not object to
34 the imposition of the C-PACE assessment.**

35 **(f) The local unit may assign all or part of its rights and duties
36 under an assessment contract to a financing provider or its
37 successors and assigns, notwithstanding rights or obligations the
38 local unit agrees to pursuant to an assessment contract.**

39 **(g) When a local unit establishes a program under this chapter,
40 the collection procedures must comply with this chapter.**

41 **(h) A local unit may administer a program or delegate
42 administration to a state agency, another local unit of government,**



1 or an administrator if the administration procedures used conform
 2 to the requirements of this chapter. Administration may include
 3 review of applications, administration of the duties of the local unit
 4 under the assessment contract, including billing, collection,
 5 enforcement, and remittance of C-PACE assessments imposed
 6 under this chapter.

7 **Sec. 11. (a)** A program must include a review process to qualify
 8 a project as an eligible improvement in which the following apply
 9 at a minimum:

10 (1) An applicant must demonstrate that the eligible
 11 improvement provides a benefit to the public, in the form of
 12 meeting the definition of an "eligible improvement" under
 13 this chapter.

14 (2) For an existing building:

15 (A) where energy efficiency, alternative energy, or water
 16 improvements are proposed, an applicant must provide:

17 (i) an energy analysis by a licensed professional engineer
 18 or other qualified energy consultant; and

19 (ii) a statement by the author of the analysis that the
 20 proposed eligible improvements will either result in
 21 more efficient use or conservation of energy or water, or
 22 the addition or use of alternative sources of energy or
 23 water; or

24 (B) where resilience improvements are proposed, an
 25 applicant must provide certification by a licensed
 26 professional engineer or other qualified resiliency
 27 consultant stating that the proposed eligible improvements
 28 will result in improved resilience.

29 (3) For new construction, an applicant must provide
 30 certification by a licensed professional engineer, engineering
 31 firm, or other qualified energy or resiliency consultant stating
 32 that the proposed eligible improvements will enable the
 33 project in which they are installed to exceed the current
 34 building code's requirements for:

35 (A) energy efficiency;

36 (B) water consumption; or

37 (C) resilience.

38 (b) After an approved eligible improvement is completed, an
 39 applicant shall provide to the local unit written verification
 40 provided by a licensed professional engineer, or other qualified
 41 energy or resiliency consultant, stating that the eligible
 42 improvement was properly completed and is operating as intended.



1 **Sec. 12. An assessment contract must include at least the**
 2 **following terms:**

3 **(1) A legal description of the property.**

4 **(2) A schedule of C-PACE assessment installments that the**
 5 **property owner or owners of record on the property**
 6 **described in subdivision (1) agree to pay.**

7 **(3) A statement that the property owner or owners of record**
 8 **are liable for all obligations incurred for financing the eligible**
 9 **improvements and that the local unit will either transfer or**
 10 **assign, as applicable, the proceeds from the payment of the**
 11 **C-PACE assessment only as set forth in section 14(b) of this**
 12 **chapter.**

13 **(4) A statement that the C-PACE assessment constitutes a lien**
 14 **against the property on which the assessment is imposed until**
 15 **the C-PACE assessment, including any interest or penalty, is**
 16 **paid in full, and that the lien runs with the property and has**
 17 **the same priority and status as other property tax and**
 18 **assessment liens.**

19 **(5) A statement that the period of the C-PACE assessment will**
 20 **not exceed the weighted average of the useful life of the**
 21 **eligible improvement that is the basis for the C-PACE**
 22 **assessment.**

23 **Sec. 13. (a) A local unit or program administrator may impose**
 24 **a fee on property owners who enter into an assessment contract for**
 25 **the costs of administering the program.**

26 **(b) Fees may not exceed the greater of one percent (1%) of the**
 27 **total amount of any assessment or twenty-five thousand dollars**
 28 **(\$25,000).**

29 **Sec. 14. (a) Except as provided in subsection (b), a local unit**
 30 **shall have no financial obligation or any other obligation or**
 31 **liability for the payment of revenue received from a C-PACE**
 32 **assessment under this chapter and shall not be deemed to have**
 33 **incurred or assumed any such obligation or liability as a result of**
 34 **entering into an assessment contract under this chapter.**

35 **(b) A local unit may agree to either of the following under the**
 36 **terms of an assessment contract:**

37 **(1) If subdivision (2) does not apply, the fiscal officer of the**
 38 **local unit shall transfer the proceeds from the payment of a**
 39 **C-PACE assessment to the financing provider for the eligible**
 40 **improvement not later than thirty (30) days after the revenue**
 41 **is received.**

42 **(2) The local unit may assign the right to receive the proceeds**



1 from a C-PACE assessment to the financing provider for the
 2 eligible improvements, in which case the payment of the
 3 C-PACE assessment must be made by the property owner
 4 directly to the financing provider.

5 (c) A local unit may not issue bonds secured by revenue from a
 6 C-PACE assessment under this chapter.

7 (d) A local unit may not agree to delay collection of any
 8 C-PACE assessment, collect less than the entire amount of any
 9 C-PACE assessment, or sell tax lien certificates or other obligations
 10 representing any portion of a C-PACE assessment for less than the
 11 entire amount of any C-PACE assessment, without the written
 12 consent of all financing providers that provided financing with
 13 respect to eligible improvements financed by that C-PACE
 14 assessment.

15 **Sec. 15. The following apply to a C-PACE assessment imposed**
 16 **under the terms of an assessment contract:**

17 (1) The assessment contract shall be recorded with the county
 18 recorder's office in the county in which the property is located
 19 immediately after it is executed. A local unit must record the
 20 executed assessment contract or may delegate such recording
 21 duties to the administrator or the financing provider.

22 (2) The local unit shall enforce the C-PACE assessment lien in
 23 the same manner that a property tax lien against commercial
 24 property is enforced by the local unit. A local unit may bill,
 25 collect, and enforce the C-PACE assessment, subject to the
 26 following guidelines:

27 (A) Delinquent C-PACE assessment installments will incur
 28 interest and penalties in the same manner as delinquent
 29 property taxes.

30 (B) In an enforcement or foreclosure action, C-PACE
 31 assessment installments not yet due shall not be
 32 accelerated or eliminated by foreclosure, including the
 33 foreclosure of a property tax.

34 (3) If the local unit delegates the responsibilities for billing,
 35 collection, and enforcement of the C-PACE assessment and
 36 lien to the financing provider pursuant to the assessment
 37 contract under this section:

38 (A) delinquent C-PACE assessment installments must
 39 incur interest and penalties as specified in the financing
 40 agreement between the property owner and financing
 41 provider; and

42 (B) enforcement of a delinquent C-PACE assessment



- 1 **installment must be in the same manner as that of a**
2 **mortgage, except that C-PACE assessment installments not**
3 **yet due may not be accelerated or eliminated by**
4 **foreclosure of the past due amount of the C-PACE**
5 **assessment.**
- 6 **Sec. 16. (a) Any C-PACE assessment and any interest or**
7 **penalties on the assessment is a first and prior lien against the**
8 **property on which the C-PACE assessment is imposed, from the**
9 **date on which the notice of C-PACE assessment is recorded until**
10 **the amount of the assessment, including interest and penalties, are**
11 **paid.**
- 12 **(b) The lien runs with the land, and that portion of the**
13 **assessment under the assessment contract that is not yet due may**
14 **not be accelerated or eliminated by foreclosure of a property tax**
15 **lien.**
- 16 **(c) A provision of a mortgage or other agreement between a**
17 **lienholder and a property owner providing for the acceleration of**
18 **any C-PACE assessment under the mortgage or agreement solely**
19 **as a result of entering into an agreement to finance an assessment**
20 **is unenforceable, if the conditions set forth in this chapter are**
21 **satisfied.**

