

HOUSE BILL No. 2320

By Committee on Financial Institutions and Rural Development

2-10

1 AN ACT concerning financial institutions; enacting the commercial
2 property assessed clean energy or C-PACE act; relating to financing for
3 energy efficiency, water efficiency, water quality, air quality, health and
4 renewable energy improvements on certain qualifying properties;
5 providing for assessment contracts between C-PACE lenders and
6 property owners; rights, duties and responsibilities of mortgage lenders;
7 reporting requirements for C-PACE lenders.
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 Section 1. (a) Sections 1 through 4, and amendments thereto, shall be
11 known and may be cited as the commercial property assessed clean energy
12 act or C-PACE act.

13 (b) As used in the C-PACE act:

14 (1) "Act" means the commercial property assessed clean energy act or
15 C-PACE act;

16 (2) "air quality or health improvement" means any measure focused
17 on reducing air pollution, enhancing quality or reducing threats to human
18 or animal health that meets quality standards established under state or
19 federal law or rules and regulations adopted by the department of health
20 and environment or any local governmental body if such local
21 governmental body's requirement is more stringent than the requirement of
22 the department of health and environment or addresses a subject not
23 addressed by the department of health and environment, United States
24 centers for disease control and prevention, national institutes of health,
25 United States department of agriculture or the Kansas department of
26 agriculture;

27 (3) "assessment contract" means a contract entered into between a
28 property owner under which the property owner agrees to pay an annual
29 assessment for a period of up to 25 years in exchange for the financing of
30 an energy efficiency improvement, water conservation or quality
31 improvement, air quality or health improvement or renewable energy
32 improvement;

33 (4) "C-PACE lender" means any federally insured depository
34 institution, including, but not limited to, a bank, savings bank, savings and
35 loan association or federal or state chartered credit union, any insurance
36 company authorized to conduct business in this state, any registered

- 1 investment company, registered business development company, a small
2 business administration small business investment company, any publicly
3 traded entity or any private entity that has:
- 4 (A) A minimum net worth of \$5,000,000;
 - 5 (B) at least three years' experience in business or industrial lending or
6 commercial real estate lending, including multifamily lending, or can
7 provide independent certification as to the availability of funds;
 - 8 (C) registered with the department of commerce and met any
9 applicable regulatory requirements; and
 - 10 (D) the ability to carry out, either directly or through a servicer, the
11 bookkeeping and customer service work necessary to accurately manage,
12 bill and collect the assessment accounts;
- 13 (5) "energy efficiency improvement" means any acquisition,
14 installation on or modification of publicly or privately owned property,
15 including appurtenances to the improved areas or land if such
16 appurtenances are deemed to be fixtures to the qualifying property under
17 Kansas law, designed to increase the energy efficiency of such property or
18 generate energy from renewable energy mechanisms, including, but not
19 limited to:
- 20 (A) Insulation in walls, roofs, attics, floors, foundations and heating
21 and cooling distribution systems;
 - 22 (B) storm windows and doors, multiglazed windows and doors, heat-
23 absorbing or heat-reflective windows and doors and other window and
24 door improvements designed to reduce energy consumption;
 - 25 (C) automatic energy control systems;
 - 26 (D) heating, ventilating or air conditioning distribution system
27 modifications and replacements;
 - 28 (E) caulking and weatherstripping;
 - 29 (F) replacement or modification of lighting fixtures to increase
30 energy efficiency of the lighting system without increasing the overall
31 illumination of the building unless the increase in illumination is necessary
32 to conform to applicable state or local building codes;
 - 33 (G) energy recovery systems;
 - 34 (H) measures to reduce the usage of water or increase the efficiency
35 of water usage;
 - 36 (I) daylighting systems;
 - 37 (J) photovoltaic solar panels or passive solar systems;
 - 38 (K) property wind generators;
 - 39 (L) battery storage systems; and
 - 40 (M) geothermal heating and cooling systems;
- 41 (6) "mortgage lender" means the holder of a valid first, second or
42 subsequent mortgage securing an existing and unpaid loan on a qualifying
43 property, or any portion thereof, upon which a qualifying project is

1 proposed by the owner of the property and a C-PACE lender. The
2 mortgage shall have been recorded prior to the date of the property owner's
3 first request to the mortgage lender for consent to the C-PACE financing;

4 (7) "project" means an energy efficiency, water efficiency, water
5 quality improvement or renewable energy improvement on a qualifying
6 property, financed pursuant to this act;

7 (8) "qualified improvement" means a renewable energy improvement,
8 an energy efficiency improvement, a water efficiency improvement, a
9 water quality improvement or an air quality or health improvement or any
10 combination of such improvements;

11 (9) "qualifying property" means all real property, other than that with
12 an intended use for residential dwellings with one to four units, except that
13 multiple residential dwellings with one to four units, owned by a
14 nonresident of such units and operated as a commercial or nonprofit
15 enterprise shall be considered qualifying properties;

16 (10) "renewable energy improvement" means any acquisition and
17 installation of a fixture, product, system, device or combination thereof on
18 publicly or privately owned property, including appurtenances to the
19 improved areas or land if such appurtenances are deemed a fixture under
20 Kansas law, that produces energy from renewable resources, including, but
21 not limited to, photovoltaic systems, solar thermal systems, wind systems,
22 biomass systems or geothermal systems;

23 (11) "water efficiency improvement" means any acquisition,
24 installation on or modification of publicly or privately owned property, and
25 that remain with the property, whether by contract or other method,
26 designed to reduce the water use consumption of such property or
27 designed to improve the efficiency of a drainage, sewer or water supply
28 system;

29 (12) "water quality improvement" means any measure focused on
30 reducing water pollution and enhancing quality that promotes
31 improvements to meet aspects of quality established under the laws of this
32 state or rules and regulations adopted by the department of health and
33 environment, the Kansas department of agriculture or any local
34 governmental body if such local governmental body's requirement is more
35 stringent than the department of health and environment or Kansas
36 department of agriculture requirement or addresses a subject not addressed
37 by either the department of health and environment or Kansas department
38 of agriculture.

39 Sec. 2. The department of commerce shall adopt rules and regulations
40 necessary to administer the provisions of this act, including, but not
41 limited to, requiring projects to meet certain energy, water or air efficiency,
42 quality or renewable energy standards.

43 Sec. 3. Each C-PACE lender shall file with the secretary of state and

1 the department of commerce an annual report for the preceding calendar
2 year not later than March 1. The annual report shall include:

3 (a) A brief description of each qualifying project financed during the
4 preceding calendar year, including the parcel identification number or
5 similar property identification nomenclature used by the local government
6 in which the project originated;

7 (b) the amount of assessments collected during the preceding
8 calendar year by project;

9 (c) the amount of administrative costs incurred during the preceding
10 calendar year by project;

11 (d) the estimated cumulative energy savings resulting from all energy
12 efficiency improvements financed during the preceding calendar year by
13 project and in total;

14 (e) the estimated cumulative energy produced by all renewable
15 energy improvements financed during the preceding calendar year by
16 project and in total;

17 (f) the estimated cumulative water usage savings or efficiency
18 enhancement produced by all conservation improvements financed during
19 the preceding calendar year by project and in total; and

20 (g) the estimated improvements in water quality enhancements by
21 project and in total during the preceding calendar year.

22 Sec. 4. (a) A C-PACE lender and the benefited property owner with a
23 qualifying project on a qualifying property shall execute an assessment
24 contract and such assessment contract shall provide:

25 (1) A description of the project, including the estimated cost and
26 details on how the project will either reduce energy or water consumption,
27 create energy from renewable sources or improve water quality;

28 (2) a mechanism for:

29 (A) Verifying the final costs of the project upon its completion; and

30 (B) providing that any amounts advanced or otherwise paid by the C-
31 PACE lender toward costs of the qualified project will not exceed the final
32 cost of the project, plus applicable authorized fees; and

33 (C) ensuring that on any qualifying property encumbered by a prior-
34 recorded mortgage held by a mortgage lender upon which a C-PACE loan
35 to finance a qualifying project is proposed, any such mortgage lender's
36 formal consent to the special C-PACE assessment shall be provided in
37 writing prior to the issuance of such special assessment and the recording
38 of such special assessment in the county records;

39 (3) an acknowledgment by the property owner that the property
40 owner has received or will receive a special benefit by financing a project;

41 (4) an agreement by the property owner to pay annual special
42 assessments that will amortize the C-PACE loan for a period not to exceed
43 25 years or a period specified in the assessment contract, whichever is less,

1 except that a C-PACE loan term shall not exceed the estimated useful life
2 of the longest-lasting improvement financed by such loan;

3 (5) a statement that the obligations set forth in the assessment
4 contract, including the obligation to pay annual special assessments, are a
5 covenant that shall run with the land without an acceleration clause and
6 shall be an obligation upon future owners of such qualifying property until
7 paid in full or otherwise released; and

8 (6) an acknowledgment that no subdivision of a qualifying property
9 subject to the assessment contract shall be valid unless the assessment
10 contract or an amendment thereof divides the total annual special
11 assessment due between the newly subdivided parcels pro rata to the
12 special benefit realized by each subdivided parcel.

13 (b) Any prior-recorded mortgage lender shall provide a formal
14 statement of consent to the special C-PACE assessment or alternatively, a
15 formal good faith affirmative statement of dissent with reasons why
16 consent to the special C-PACE assessment is being withheld.

17 (c) The C-PACE lender associated with the transaction shall have the
18 right to provide to the property owner different terms for the C-PACE loan
19 agreement or remedies or credit enhancements at such C-PACE lender's
20 discretion to respond to the mortgage lender's statement of dissent and if
21 such provisions are reasonably aligned with and calculated to address the
22 mortgage lender's concerns.

23 (d) The property owner may send a subsequent formal request for
24 consent to the mortgage lender pursuant to this section that shall require a
25 further formal statement of consent or dissent response from the mortgage
26 lender. There shall be no limit on the number of formal requests for
27 consent that may be made.

28 (e) If more than one mortgage lender exists for a qualifying property,
29 the consent of all such mortgage lenders shall be obtained.

30 (f) Any formal request or notice required to be given pursuant to this
31 act from a property owner to a mortgage lender or from a mortgage lender
32 to a property owner shall be sent to the respective party's most current
33 business address as indicated in the records of the parties' prior mortgage
34 agreements, addressed as "Attention: C-PACE LENDING CONSENT
35 REQUEST OFFICER" if to the mortgage lender and addressed as
36 "Attention: C-PACE LENDING CONSENT GOOD FAITH RESPONSE"
37 if to the property owner, and shall be sent by:

38 (1) Registered mail;

39 (2) certified mail, return receipt requested;

40 (3) commercial courier service; or

41 (4) an equivalent form of transmission that establishes the fact of
42 transmission and receipt by the addressee, including hand delivery with a
43 signed receipt acknowledging delivery.

1 (g) Any formal response to a property owner from a mortgage lender
2 consenting or dissenting to a special C-PACE assessment shall be sent in
3 the manner authorized by subsection (f) within 30 days from receipt by the
4 mortgage lender of the request for consent.

5 (h) The origination of and consent to a C-PACE assessment that
6 conforms with the provisions of this section shall not be a default under
7 the covenants of the security instrument perfecting any senior lienholder's
8 position.

9 (i) On or before October 1, 2021, all mortgage lenders, including any
10 bank, savings bank, trust company, savings and loan association, building
11 and loan association, industrial loan company or credit union organized,
12 chartered or authorized under the laws of the United States or of any state
13 that is authorized to make loans and to receive deposits, shall develop a
14 written internal policy for how to process and administer C-PACE requests
15 for consent. Such policy shall clearly articulate the individuals within the
16 financial institution who are authorized to give final consent or dissent. In
17 all cases where a mortgage lender's policy under this section is silent,
18 nonexistent or not promulgated to each of the mortgage lender's business
19 locations, any official, agent, officer, employee, manager or other
20 individual who is authorized to countersign commercial mortgage and
21 deeds of trust originations shall be considered a valid countersignatory for
22 C-PACE lender consent requests.

23 (j) A mortgage lender's officer granting consent to a C-PACE lending
24 request shall include on the document with such officer's signature that:

25 (1) The financial institution has a written internal policy for C-PACE
26 consents and dissents;

27 (2) the officer is authorized by the financial institution's written
28 internal policy to exercise consent or dissent; and

29 (3) the officer is acting in accordance with such policy and with the
30 provisions of this act, or that the institution has no written internal policy
31 for C-PACE consents and dissents.

32 (k) Nothing in this act is intended to limit informal communication,
33 discussion and negotiation between the C-PACE lender, any mortgage
34 lender and any property owner, prior to or after the sending of a formal
35 request for consent or a formal response consenting or dissenting
36 regarding the benefits of a C-PACE financed project on the property and
37 any concerns regarding such project. Such informal communications shall
38 not be considered to be a formal request for consent and a formal response
39 for purposes of this act.

40 (l) The total special assessment levied against a qualifying property
41 under an assessment contract shall not exceed the sum of the cost of the
42 project, including any required energy audits and inspections, or portion
43 thereof, financed through the participation in a C-PACE program,

1 including the costs of any audits or inspections required and such
2 administration fees, interest and other financing costs reasonably required.

3 (m) The annual special assessments agreed to under a C-PACE
4 financing assessment contract shall be a lien on the qualifying property
5 against which it is assessed on behalf of the applicable C-PACE lender
6 from the date that each annual assessment under the assessment contract
7 becomes due until such special assessment is paid in full. Such special
8 assessments shall be collected by the C-PACE lender directly from the
9 owner of the qualifying property in the same manner and with the same
10 priority as ad valorem real property taxes and other special assessments
11 and charges under state law are collected by the county treasurer. Once
12 collected, the C-PACE lender shall apply such special assessment revenues
13 to the reduction of the amount financed under the C-PACE loan
14 agreement, with applicable interest and authorized fees. Such special
15 assessments shall be collected as provided in this subsection from all
16 subsequent property owners, including the state and all political
17 subdivisions thereof, for the term of the assessment contract.

18 (n) The county treasurer shall not be required to collect delinquent
19 annual assessments under any C-PACE financing. Any third-party C-
20 PACE lender collecting annual assessments directly from the owner of the
21 qualifying property shall notify the county treasurer within 10 business
22 days of an annual assessment becoming delinquent.

23 (o) The primary method of financing special C-PACE assessments
24 shall be through third-party C-PACE lenders.

25 (p) An initial audit conducted by a qualified energy, water or air
26 auditor may be required as a prerequisite to project financing, as well as
27 inspections to verify project completion.

28 Sec. 5. This act shall take effect and be in force from and after its
29 publication in the statute book.