

**HOUSE BILL No. 2320**

By Committee on Financial Institutions and Pensions

2-7

1 AN ACT concerning financial institutions; enacting the commercial  
2 property assessed capital enhancement or C-PACE act; relating to  
3 financing for energy efficiency, water conservation, water quality, air  
4 quality, health and renewable energy improvements on certain  
5 qualifying properties; requiring the department of commerce to  
6 designate or establish a C-PACE board; authorizing powers, duties and  
7 rules and regulations of such board; providing for assessment contracts  
8 between C-PACE lenders and property owners; establishing rights,  
9 duties and responsibilities of mortgage lenders.

10

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

12 Section 1. (a) Sections 1 through 4, and amendments thereto, shall be  
13 known and may be cited as the commercial property assessed capital  
14 enhancement act or C-PACE act.

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

16 (1) "Act" means the commercial property assessed capital  
17 enhancement act of C-PACE act.

18 (2) "Air quality or health improvement" means any measure focused  
19 on reducing air pollution, enhancing quality or reducing threats to human  
20 or animal health that promulgates improvements to meet aspects of quality  
21 established under the definitions in law pertaining to or rules and  
22 regulations adopted by the department of health and environment, any  
23 local governmental body or other federal guidelines.

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

30 (4) "C-PACE board" means the entity designated by the department  
31 of commerce to evaluate financing applications, develop business rules  
32 and administer assessment contracts.

33 (5) "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 credit union, insurance company  
36 authorized to conduct business in one or more states, registered investment

1 company, registered business development company, a small business  
2 administration small business investment company, any publicly traded  
3 entity or any private entity that has:

4 (A) Successfully registered with the department of commerce and  
5 met any applicable regulatory requirements; and

6 (B) the ability to carry out, either directly or through a servicer, the  
7 bookkeeping and customer service work necessary to accurately manage,  
8 bill and collect the assessment accounts.

9 (6) "Energy efficiency improvement" means any acquisition of or  
10 installation on or modification of publicly or privately owned property,  
11 including appurtenances to the improved areas or land if such  
12 appurtenances are deemed to be fixtures to the qualifying property under  
13 Kansas law, designed to increase the energy efficiency of such property or  
14 generate energy from renewable energy mechanisms, including, but not  
15 limited to:

16 (A) Insulation in walls, roofs, attics, floors, foundations and heating  
17 and cooling distribution systems;

18 (B) storm windows and doors, multiglazed windows and doors, heat-  
19 absorbing or heat-reflective windows and doors and other window and  
20 door improvements designed to reduce energy consumption;

21 (C) automatic energy control systems;

22 (D) heating, ventilating or air conditioning distribution system  
23 modifications and replacements;

24 (E) caulking and weatherstripping;

25 (F) replacement or modification of lighting fixtures to increase  
26 energy efficiency of the lighting system without increasing the overall  
27 illumination of the building unless the increase in illumination is necessary  
28 to conform to applicable state or local building codes;

29 (G) energy recovery systems;

30 (H) measures to reduce the usage of water or increase the efficiency  
31 of water usage;

32 (I) daylighting systems;

33 (J) photovoltaic solar panels or passive solar systems;

34 (K) property wind generators;

35 (L) battery storage systems; and

36 (M) geothermal heating and cooling systems.

37 (7) "Mortgage lender" means the holder of a valid senior mortgage  
38 securing an existing and unpaid loan on a qualifying property or any  
39 portion thereof, upon which property a qualifying project is proposed by  
40 the owner of the property and a C-PACE lender. The mortgage shall have  
41 been recorded prior to the date of the property owner's first request to the  
42 mortgage lender for consent to the C-PACE financing.

43 (8) "Project" means an energy efficiency, water conservation, water

1 quality improvement or renewable energy improvement on a qualifying  
2 property, financed pursuant to this act.

3 (9) "Qualified improvement" means a renewable energy  
4 improvement, an energy efficiency improvement, a water conservation  
5 improvement, a water quality improvement or an air quality or health  
6 improvement or any combination of such improvements.

7 (10) "Qualifying property" means:

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

13 (B) residential farms; or

14 (C) all property used to promote and provide for sustainable  
15 agricultural practices including, but not limited to, vertical farming units  
16 and other practices.

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

24 (12) "Water conservation project" means any acquisition of or  
25 installation on or modification of publicly or privately owned property, and  
26 that remains with the property, whether by contract or other method,  
27 designed to reduce the water use consumption of such property, to improve  
28 the efficiency of a drainage, sewer or water supply system or provide for  
29 the conservation of water.

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

40 Sec. 2. (a) The department of commerce shall designate or establish a  
41 nonprofit entity to serve as the C-PACE board. The selection of the C-  
42 PACE board shall be done through consultation of both private and public  
43 stakeholders. In addition to operational parameters, the contract between

1 the department of commerce and the C-PACE board shall stipulate that  
2 unilateral severance may only occur in cases of gross negligence of the  
3 requirements of this act, similar violations of rules and regulations adopted  
4 pursuant to this act or as a result of solvency issues. In the case of a  
5 prolonged absence of an eligible entity, the department of commerce may  
6 establish an interim C-PACE board consisting of state employees.

7 (b) The C-PACE board, with oversight and approval from the  
8 department of commerce, shall adopt rules and regulations necessary to  
9 administer the provisions of this act, including, but not limited to,  
10 requiring projects to meet certain energy, water or air efficiency, quality or  
11 renewable energy standards. Duties of the C-PACE board shall include,  
12 but not be limited to:

- 13 (1) Evaluation and adoption or rejection of C-PACE applications;
- 14 (2) tracking project progress;
- 15 (3) monitoring payment of annual special assessments; and
- 16 (4) providing reports in accordance with section 3, and amendments  
17 thereto.

18 (c) The C-PACE board is authorized to impose a fee for program  
19 administration. Such fee may be assessed as part of the program  
20 application, to be paid by the property owner. The fee of an approved  
21 application shall be based on a percentage of the total finance amount and  
22 shall not exceed the lesser of 1% of such amount or \$50,000.

23 Sec. 3. The C-PACE board shall file with the secretary of state and  
24 the department of commerce an annual report for the preceding calendar  
25 year not later than March 1. Such annual report shall include:

26 (a) A brief description of each qualifying project financed during the  
27 preceding calendar year, including the parcel identification number or  
28 similar property identification nomenclature used by the local government  
29 where the project originated;

30 (b) the amount of assessments collected during the preceding  
31 calendar year by project; and

32 (c) the amount of administrative costs incurred during the preceding  
33 calendar year by project.

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

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

40 (2) a mechanism for:

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

42 (B) providing that any amounts advanced or otherwise paid by the C-  
43 PACE lender toward costs of the qualified project will not exceed the final

1 cost of the project, plus applicable authorized fees; and

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

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

10 (4) an agreement by the property owner to pay annual special  
11 assessments that will amortize the C-PACE loan for a period not to exceed  
12 25 years or a period specified in the assessment contract, whichever is  
13 shorter, except that a C-PACE loan term shall not exceed the estimated  
14 useful life of the longest-lasting improvement financed by such loan;

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

20 (6) an acknowledgment that no subdivision of a qualifying property  
21 subject to the assessment contract shall be valid unless the assessment  
22 contract or an amendment thereto divides the total annual special  
23 assessment due between the newly subdivided parcels pro rata to the  
24 special benefit realized by each subdivided parcel.

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

29 (c) The C-PACE lender associated with the transaction shall have the  
30 right to provide to the property owner different terms for the C-PACE loan  
31 agreement, remedies or credit enhancements at such C-PACE lender's  
32 discretion to respond to the mortgage lender's statement of dissent if such  
33 provisions are reasonably aligned with and calculated to address the  
34 mortgage lender's concerns.

35 (d) The property owner may send a subsequent formal request for  
36 consent to the mortgage lender pursuant to this section that shall require a  
37 further formal statement of consent or dissent response from the mortgage  
38 lender.

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

41 (f) Any formal request or notice required to be given pursuant to this  
42 act from a property owner to a mortgage lender or from a mortgage lender  
43 to a property owner shall be sent to the respective party's most current

1 business address as indicated in the records of the parties' prior mortgage  
2 agreements, addressed as "Attention: C-PACE LENDING CONSENT  
3 REQUEST OFFICER" if to the mortgage lender and addressed as  
4 "Attention: C-PACE LENDING CONSENT GOOD FAITH RESPONSE"  
5 if to the property owner, and shall be sent by:

6 (1) Registered mail;  
7 (2) certified mail, return receipt requested;  
8 (3) commercial courier service; or  
9 (4) an equivalent form of transmission that establishes the fact of  
10 transmission and receipt by the addressee, including hand delivery with a  
11 signed receipt acknowledging delivery.

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

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

20 (i) On or before October 1, 2023, all mortgage lenders, including any  
21 bank, savings bank, trust company, savings and loan association, building  
22 and loan association, industrial loan company or credit union organized,  
23 chartered or authorized under the laws of the United States or of any state  
24 that is authorized to make loans and to receive deposits, shall develop a  
25 written internal policy for how to process and administer C-PACE requests  
26 for consent. Such policy shall clearly articulate the individuals within the  
27 financial institution who are authorized to give final consent or dissent. In  
28 all cases where a mortgage lender's policy under this section is silent,  
29 nonexistent or not promulgated to each of the mortgage lender's business  
30 locations, any official, agent, officer, employee, manager or other  
31 individual who is authorized to countersign commercial mortgage and  
32 deeds of trust originations shall be considered a valid countersignatory for  
33 C-PACE lender consent requests.

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

37 (1) Financial institution has a written internal policy for C-PACE  
38 consents and dissents;

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

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

1 (k) Nothing in this act is intended to limit informal communications,  
2 discussions and negotiations between the C-PACE lender, any mortgage  
3 lender and any property owner, prior to or after the sending of a formal  
4 request for consent or a formal response consenting or dissenting,  
5 regarding the benefits of a C-PACE financed project on the property and  
6 any concerns regarding such project. Such informal communications shall  
7 not be considered to be a formal request for consent or a formal response  
8 for purposes of this act.

9 (l) The total special assessment levied against a qualifying property  
10 under an assessment contract shall not exceed the sum of the cost of the  
11 project, including any required energy audits and inspections or portion  
12 thereof, financed through the participation in a C-PACE program,  
13 including the costs of any audits or inspections required and such  
14 administrative fees, interest and other financing costs reasonably required.

15 (m) The annual special assessments agreed to under a C-PACE  
16 financing assessment contract shall be a lien on the qualifying property  
17 against which it is assessed on behalf of the applicable C-PACE lender  
18 from the date that each annual assessment under the assessment contract  
19 becomes due until such special assessment is paid in full. Such special  
20 assessments shall be collected by the C-PACE lender directly from the  
21 owner of the qualifying property in the same manner and with the same  
22 priority as ad valorem real property taxes and other special assessments  
23 and charges under state law are collected by the county treasurer. Once  
24 collected, the C-PACE lender shall apply such special assessment revenues  
25 to the reduction of the amount financed under the C-PACE loan  
26 agreement, with applicable interest and authorized fees. Such special  
27 assessments shall be collected as provided in this subsection from all  
28 subsequent property owners, including the state and all political  
29 subdivisions thereof, for the term of the assessment contract.

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

35 (o) The sole method of financing special C-PACE assessments shall  
36 be through third-party C-PACE lenders.

37 (p) A C-PACE lender may require as a prerequisite to project  
38 financing an:

39 (1) Initial audit conducted by a qualified energy, water or air auditor;  
40 or

41 (2) agreement allowing inspections of the qualifying property to  
42 verify project completion.

43 Sec. 5. This act shall take effect and be in force from and after its

- 1 publication in the statute book.