

**South Carolina General Assembly**  
121st Session, 2015-2016

**H. 4043**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Loftis, Burns, Erickson, Robinson-Simpson, Corley, Duckworth, Funderburk, Hodges, Huggins, Kennedy, Long, Simrill, G.R. Smith, Wells and Forrester

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Introduced in the House on April 23, 2015

Currently residing in the House Committee on **Ways and Means**

Summary: Commercial-Property Assessed Clean Energy Act

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
4/23/2015	House	Introduced and read first time ( <a href="#">House Journal-page 16</a> )
4/23/2015	House	Referred to Committee on <b>Ways and Means</b> ( <a href="#">House Journal-page 16</a> )
4/23/2015	House	Member(s) request name added as sponsor: Forrester

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**VERSIONS OF THIS BILL**

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**A BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 39 TO TITLE 6 SO AS TO ENACT THE “SOUTH CAROLINA COMMERCIAL-PROPERTY ASSESSED CLEAN ENERGY ACT” (C-PACE) TO PROVIDE THAT GOVERNING BODIES MAY ESTABLISH A DISTRICT BY ADOPTION OF AN ORDINANCE FOR THE PURPOSE OF PROMOTING, ENCOURAGING, AND FACILITATING CLEAN ENERGY IMPROVEMENTS WITHIN ITS GEOGRAPHIC AREA; TO PROVIDE REQUIREMENTS TO BE INCLUDED IN THE ORDINANCE; TO PROVIDE THAT MEMBERS OF THE DISTRICT AND OWNERS OF QUALIFYING REAL PROPERTY MAY VOLUNTARILY EXECUTE A WRITTEN AGREEMENT TO PARTICIPATE IN THE COMMERCIAL-PROPERTY ASSESSED CLEAN ENERGY PROGRAM; TO PROVIDE THAT THE GOVERNING BODY HAS THE AUTHORITY TO IMPOSE AN ASSESSMENT ON THE QUALIFYING REAL PROPERTY; TO PROVIDE THAT THE ASSESSMENT SHALL CONSTITUTE A C-PACE LIEN AGAINST THE QUALIFYING REAL PROPERTY UNTIL PAID; TO PROVIDE HOW CLEAN ENERGY IMPROVEMENTS MAY BE FINANCED; TO PROVIDE THAT CLEAN ENERGY IMPROVEMENTS MUST MEET ALL APPLICABLE SAFETY, PERFORMANCE, INTERCONNECTION, AND RELIABILITY STANDARDS; AND TO DEFINE NECESSARY TERMS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 6 of the 1976 Code is amended by adding:

“CHAPTER 39

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South Carolina Commercial-Property Assessed  
Clean Energy Act

Section 6-39-10. This chapter may be cited as the ‘South Carolina  
Commercial-Property Assessed Clean Energy Act’ (C-PACE).

Section 6-39-20. (A) For purposes of this chapter:

(1) ‘Assessment’ means a charge against the real property  
belonging to an owner within a district created pursuant to this  
chapter. The assessment must be made only upon qualifying real  
property located within the district and whose owner has executed a  
written agreement with the governing body agreeing to the  
assessment. An assessment imposed in this chapter remains valid  
and enforceable even if there is a later sale or transfer of property,  
or a part of it. The rates of assessment within a district need not be  
uniform.

(2) ‘C-PACE’ means Commercial-Property Assessed Clean  
Energy.

(3) ‘Clean energy improvement’ means a water efficiency  
measure, energy efficiency measure, or a fixture, product, device, or  
interacting group of fixtures, products, or devices on the customer’s  
side of the meter that use one or more clean energy resources or  
renewable energy resources to generate electricity or create heat or  
cooling. Clean energy improvements must be permanently fixed to  
the property and cannot be removed from the property in the event  
of a change of ownership.

(4) ‘Clean energy resource’ means a source of energy that  
includes, but is not limited to, natural gas, fuel cells, hydrogen  
storage, battery storage, thermal storage, load control switches,  
production and conversion technologies, alternative vehicle fueling  
equipment and charging stations, hydropower, and alternative fuels.

(5) ‘District’ means a clean energy financing district formed  
pursuant to this chapter by a municipality or county that lies within  
the local unit of government’s jurisdictional boundaries. A district  
may be comprised of noncontiguous parcels of land. A county or  
municipality may create more than one district under this program  
and districts may be separate, overlapping, or coterminous.

(6) ‘Energy efficiency measure’ means equipment, devices,  
or materials intended to decrease energy consumption, including,  
but not limited to, upgrades to a building envelope such as insulation  
and glazing; improvements in heating, ventilating and cooling  
systems; automated energy control systems; improved lighting,

1 including daylighting; energy-recovery systems; combined heat and  
2 power systems; or another utility cost-savings measure approved by  
3 the governing body.

4 (7) ‘Governing body’ means, as appropriate, the county  
5 council or the municipal council or councils with authority over the  
6 geographic area in which the district lies and acting pursuant to the  
7 provisions of this chapter.

8 (8) ‘Owner’ means an owner of qualifying real property  
9 whose name appears on the county tax records as an owner of real  
10 estate, who desires to execute clean energy improvements and  
11 provides consent to an assessment against the qualifying real  
12 property to finance clean energy improvements.

13 (9) ‘Program’ or ‘C-PACE program’ means a program  
14 established by a governing body to administer commercial-property  
15 assessed clean energy financing within a district. This program may  
16 be administered by the governing body or by a third party paid for  
17 the program administration services.

18 (10) ‘Qualifying real property’ means a commercial property  
19 including industrial, agricultural, nonprofit owned buildings, and  
20 multifamily dwellings consisting of five or more units that the  
21 governing body has determined, after review, can benefit by the  
22 installation of clean energy improvements. Qualifying real property  
23 does not include nonprofit owned single-family residential property.  
24 Multifamily dwellings with five or more units must be considered  
25 ‘nonresidential’ customer generators to ensure these commercial  
26 properties adhere to the capacity restrictions of Section  
27 58-40-10(C).

28 (11) ‘Renewable energy resource’ means a source of energy  
29 that includes, but is not limited to, solar photovoltaic and solar  
30 thermal resources, wind resources, low-impact hydroelectric  
31 resources, geothermal resources, tidal and wave energy resources,  
32 recycling resources, hydrogen fuel derived from renewable  
33 resources, combined heat and power derived from renewable  
34 resources, and biomass resources.

35 (12) ‘Renewable energy facility’ means a facility that  
36 generates electric power by the use of a renewable generation  
37 resource that was placed in service for use by or to provide power  
38 to an electrical utility after January 1, 2014. A renewable energy  
39 facility also means any incremental capacity installed after January  
40 1, 2014, which delivers energy from a renewable energy resource.

41 (13) ‘Water efficiency measure’ means equipment, processes,  
42 services, or materials intended to improve water management  
43 practices and to decrease water consumption, loss, or waste.

1

2 Section 6-39-30. (A) A governing body may establish a district  
3 by ordinance for the purpose of promoting, encouraging, and  
4 facilitating clean energy improvements within its geographic  
5 boundaries.

6 (B) A combination of governing bodies may establish a district  
7 by each governing body:

8 (1) adopting an ordinance that provides for the governing  
9 body's participation in the district; and

10 (2) entering into a joint agreement with one or more other  
11 participating governing bodies.

12 (C) A governing body shall define the scope or limitations of  
13 projects to be considered in an ordinance. If a governing body, other  
14 than a county council, proposes to create a district that will be  
15 administered or collected by county officials, the county council  
16 also must approve the creation of the district by ordinance.

17

18 Section 6-39-40. (A) An ordinance authorizing the creation of a  
19 district pursuant to Section 6-39-30 must:

20 (1) require a description of the scope or limitations of  
21 qualifying clean energy improvements to be considered under the  
22 ordinance;

23 (2)(a) require that, as part of the agreement subject to Sections  
24 6-39-50 and 6-39-60, the owner of qualifying real property shall  
25 have an energy audit performed by a third-party on the qualifying  
26 real property considered for clean energy improvements. The energy  
27 audit must:

28 (i) be commensurate to the investment of the clean  
29 energy improvements;

30 (ii) be conducted by an energy auditor certified by the  
31 Building Performance Institute or similar organization; and

32 (iii) provide an estimate of the costs of the proposed  
33 energy efficiency and conservation measures and the expected  
34 savings associated with the measures, and it must recommend  
35 measures appropriately sized for the specific use contemplated;

36 (b) an agreement entered following completion of an  
37 energy audit shall specify the measures to be completed and the  
38 contractor responsible for completion of the measures. The choice  
39 of a contractor to perform the work must be made by the property  
40 owner. Upon completion of the work, it must be inspected by an  
41 energy auditor certified by the Building Performance Institute or  
42 similar organization. Any work that is determined to have been done

1 improperly or to be inappropriately sized for the intended use must  
2 be remedied by the responsible contractor;

3 (3) require clean energy improvements to adhere to the  
4 requirements of Article 23, Chapter 27, and Chapters 37, 39, and 40,  
5 Title 58;

6 (4) require that applicants shall provide documentation of  
7 approval for proposed technologies and improvements by all  
8 historical and architectural review boards with jurisdiction over the  
9 qualifying real property;

10 (5) provide that the owner of the qualifying real property  
11 subject to a mortgage obtain written consent from the mortgage  
12 holder before participating in the C-PACE program;

13 (6) provide a methodology for the imposition, apportionment,  
14 adjustment, and termination of the assessment pursuant to Section  
15 6-39-60;

16 (7) require that the term of the assessment pursuant to Section  
17 6-39-60 must not exceed the weighted average of the useful life of  
18 the clean energy improvements installed, and in no instance be for  
19 more than twenty years from the date of the initial assessment; and

20 (8) provide that payments and assessments are not accelerated  
21 due to a default, and that a tax delinquency exists only for C-PACE  
22 assessments not paid when due;

23 (9) require that liability for assessments related to the  
24 financing of clean energy improvements remains with the qualifying  
25 real property;

26 (10) impose requirements and conditions on financing  
27 arrangements to ensure timely repayment; and

28 (11) require that qualifying real property must be current on  
29 property tax and assessment payments and that a property owner  
30 must not be in foreclosure or have any involuntary liens, defaults,  
31 or judgments applicable to the subject qualifying real property.

32

33 Section 6-39-50. (A) Properties within the district need not be  
34 contiguous, and a participating governing body may, by resolution:

35 (1) add properties of those owners who have voluntarily  
36 executed a written agreement with members of a district consenting  
37 to the inclusion of their property within the district and participation  
38 in the program; and

39 (2) remove properties of those owners who have satisfied  
40 their contractual assessment obligations.

41 (B) The written agreement between members of a district and the  
42 property owner shall establish the terms and conditions of the

1 operation of the district within the limitations provided in this  
2 chapter.

3 (C) At least thirty days before the execution of a written  
4 agreement between the members of a district and the property  
5 owner, the owner shall provide notice of the owner's application to  
6 participate in a C-PACE program to each mortgage lender holding  
7 a lien on the owner's property.

8 (D) The property owner subject to a mortgage must obtain  
9 consent from the mortgage holder before execution of an agreement  
10 to participate in the C-PACE program. If the mortgage holder has  
11 established a payment schedule to accrue property taxes throughout  
12 the year, a repayment of the principal and interest under this  
13 program on the same schedule may be established.

14  
15 Section 6-39-60. (A) The governing body has the authority to  
16 impose an assessment on the qualifying real property whose owners  
17 have voluntarily executed the following:

18 (1) A written agreement consenting to:

- 19 (a) the inclusion of their property within the district; and  
20 (b) undertake clean energy improvements.

21 (2) A written financing agreement for the purpose of  
22 financing those clean energy improvements pursuant to Section  
23 6-39-90.

24 (B) The assessment must include, but not be limited to, an  
25 amount up to one-hundred percent of a project's unpaid costs. These  
26 costs include the following:

- 27 (1) costs of the equipment and technologies for clean energy  
28 improvements;  
29 (2) interest expenses;  
30 (3) architectural and engineering costs; and  
31 (4) other costs associated with the administration of the  
32 district.

33  
34 Section 6-39-70. (A) The assessment levied pursuant to Section  
35 6-39-60, in addition to any interest, fees and any penalties, shall  
36 constitute a C-PACE lien against the qualifying real property until  
37 paid. The C-PACE lien may be paid off early and the equipment  
38 removed if the equipment becomes obsolete or damaged.

39 (B) The status of the C-PACE lien is based on the date the lien  
40 is filed at the courthouse. The C-PACE lien must be junior to a  
41 mortgage.

1 (C) An assessment must be levied, collected, and administered  
2 in the same manner as the property taxes are levied, collected, and  
3 administered by the participating governing body on real property.  
4 This includes the process followed in the event of default or  
5 delinquency, with respect to any penalties, fees and remedies and  
6 lien priorities.

7 (D) Each assessment may be continued, recorded, and released  
8 in the manner provided for property tax liens, subject to the written  
9 consent of existing mortgage holders.

10 (E) The assessment will not accelerate or become extinguished  
11 in the event of a delinquency, default, foreclosure or bankruptcy of  
12 the owner. No property owner is responsible for paying any  
13 assessment other than that to which the property owner has entered  
14 into a written agreement.

15

16 Section 6-39-80. (A) A participating governing body may assign  
17 to the district any and all liens filed by the tax collector, as provided  
18 in a written agreement between the participating governing body  
19 and the district.

20 (B) The district may sell or assign, for consideration, any and all  
21 liens received from the participating governing body. The  
22 consideration received by the district must be negotiated between  
23 the district and the assignee. The assignee or assignees of these liens  
24 shall:

25 (1) have and possess the same powers and rights at law or in  
26 equity as the district and the participating municipality and its tax  
27 collector would have had if the lien had not been assigned with  
28 regard to the precedence and priority of that lien, the accrual of  
29 interest, and the fees and expenses of collection.

30 (2) have the same rights to enforce those liens as a private  
31 party holding a lien on real property, including, but not limited to,  
32 foreclosure and a suit on the debt.

33 (C) Costs and reasonable attorneys' fees incurred by the assignee  
34 as a result of a foreclosure action or other legal proceeding brought  
35 pursuant to this section and directly related to the proceeding must  
36 be levied in a proceeding against each person having title to any  
37 property subject to the proceedings. These costs and fees may be  
38 collected by the assignee at any time after demand for payment has  
39 been made by the assignee.

40

41 Section 6-39-90. (A) Clean energy improvements may be  
42 financed in the following manner:



1 (1) with revenue bonds issued by the participating governing  
2 body or another qualified issuer of municipal revenue bonds,  
3 provided that these revenue bonds are secured solely by the  
4 assessments collected from properties whose owners have  
5 voluntarily entered into assessment contracts and have undertaken  
6 clean energy improvement projects, and other funds lawfully  
7 pledged as security;

8 (2) with funds provided directly by a bank or other financial  
9 institution or lender pursuant to a contract between the owner, the  
10 governing body, and the lender setting forth terms for the repayment  
11 of these funds, and remedies in the event of a delinquency or default;  
12 or

13 (3) with other legally available funds.

14 (B) The credit and taxing power of the State will not be pledged  
15 for the debt evidenced by the bonds. The bonds will be payable  
16 solely from the revenues received from the special assessments on  
17 the owner's qualifying real property pursuant to this chapter.

18  
19 Section 6-39-100. Clean energy improvements must meet all  
20 applicable safety, performance, interconnection, and reliability  
21 standards established by the Public Service Commission of South  
22 Carolina, the National Electrical Code, the National Electrical  
23 Safety Code, the Institute of Electrical and Electronics Engineers,  
24 Underwriters Laboratories, the Federal Energy Regulatory  
25 Commission, and any local governing authorities prior to qualifying  
26 for financing.

27  
28 Section 6-39-110. In no event shall the net energy metering  
29 provisions of Chapter 40, Title 58 be construed as allowing property  
30 owners to engage in meter aggregation, group or joint billing  
31 projects, or virtual net metering.

32  
33 Section 6-39-120. (A) The provisions of this chapter may not  
34 be used to implement energy efficiency or conservation measures  
35 that result in the replacement of natural gas appliances or equipment  
36 with electric appliances or equipment, or that result in the  
37 replacement of electric appliances or equipment with natural gas  
38 appliances or equipment unless:

39 (1) the customer who seeks to install the energy efficiency or  
40 conservation measure is being provided electric and natural gas  
41 service by the same provider; or

42 (2) an electric appliance used for home heating is being  
43 replaced by an appliance that operates primarily on electricity but

1 which has the capability of also operating on a secondary fuel  
2 source.

3 (B) Nothing in this section may allow the resale of electricity.

4

5 Section 6-39-130. Nothing contained in this chapter may be  
6 construed to limit or restrict the existing powers of an owner or  
7 governing body. The powers and duties of a district conferred by  
8 this chapter are public and governmental functions exercised for a  
9 public purpose and for matters of public necessity. The district and  
10 its personnel are immune from suit in tort for the performance of its  
11 duties pursuant to this chapter unless immunity from tort is  
12 expressly waived in writing.

13

14 Section 6-39-140. Nothing contained in this chapter may be  
15 construed to conflict with Article 23, Chapter 27, or Chapters 37,  
16 39, and 40, Title 58.”

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18 SECTION 2. This act takes effect upon approval by the Governor.

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