

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred  
3 Senate Bill No. 138 entitled “An act relating to commercial property-assessed  
4 clean energy projects” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 24 V.S.A. chapter 87, subchapter 3 is added to read:

8 Subchapter 3. Commercial Property-Assessed Clean Energy

9 § 3275. COMMERCIAL PROPERTY-ASSESSED CLEAN ENERGY

10 DISTRICTS; APPROVAL OF VOTERS

11 (a)(1) In this subchapter, “district” means a property-assessed clean energy  
12 district.

13 (2) The legislative body of a town, city, or incorporated village may  
14 submit to the voters of the municipality the question of whether to designate  
15 the municipality as a property-assessed clean energy district. In a district, only  
16 those property owners who have entered into written agreements with the  
17 municipality under section 3276 of this title would be subject to a special  
18 assessment, as set forth in section 3255 of this title.

19 (b) Upon a vote of approval by a majority of the qualified voters of the  
20 municipality voting at an annual or special meeting duly warned for that  
21 purpose, the municipality allow for the imposition of a special assessment to

**Commented [MY1]:** How often does this occur a year? If on a regular or as-needed basis, this could work. Otherwise, this is a serious impediment to implementation. C-PACE projects, when they arise, are a creature of timing for finance purposes, and having to wait for annual elections, etc will essentially kill such projects. I would note that New Hampshire initially defaulted to a similar model in its overhaul of C-PACE legislation last year, and now the legislature is moving to amend the bill to give direct authority to local legislators for a number of reasons, one being the complexity of C-PACE in being submitted to the voters.

[https://www.conwaydailysun.com/news/local/conway-selectmen-elect-to-wait-on-c-pacer-article/article\\_abb7bfb5-d4db-4288-85f7-29ff141a0174.html](https://www.conwaydailysun.com/news/local/conway-selectmen-elect-to-wait-on-c-pacer-article/article_abb7bfb5-d4db-4288-85f7-29ff141a0174.html)

1 secure private financing for property owners for projects relating to renewable  
2 energy, as defined in 30 V.S.A. § 8002(17), or to eligible projects ~~relating to~~  
3 energy efficiency as defined by section ~~3267-3276~~ of this title, undertaken by  
4 owners of commercial or industrial buildings within the boundaries of the  
5 municipality.

**Commented [MY2]:** This is just cleanup -- b/c the definition of improvements is expanded to include water and resiliency, taking out “energy efficiency” is cleaner.

6 (c) As used in this chapter, “commercial or industrial building” means any  
7 building other than a residential dwelling of four or less units.  
8 (d) A municipality that has adopted a special assessment under this section  
9 may charge a fee for providing this service to a third-party lender.

**Commented [MY3]:** This is just to remove any doubt that MF housing is eligible for CPACE.

10 § 3276. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS;  
11 ENERGY SAVINGS ANALYSIS; LENDER CONSENT  
12 (a) Upon an affirmative vote made pursuant to section 3275 of this title and  
13 the performance of an energy savings analysis pursuant to subsection (b) of  
14 this section, an owner of a commercial or industrial building, within the  
15 boundaries of a district, may enter into a written agreement with the  
16 municipality that shall constitute the owner’s consent to be subject to a special  
17 assessment, as set forth in section 3255 of this title. Entry into such an  
18 agreement may occur only after January 1, 2027.

19 (b) Prior to entering into a written agreement, a property owner shall have  
20 analyses performed to quantify the project costs and energy savings and

1 estimated carbon impacts of the proposed energy or resiliency improvements;  
2 including the following analyses:

3       (1) where energy or water usage improvements are proposed, an energy  
4 analysis by a licensed engineering firm or engineer, or other qualified  
5 professional listed in the program guidebook, stating that the proposed  
6 qualified improvements will either result in more efficient use or conservation  
7 of energy or water, the reduction of greenhouse gas emissions, or the addition  
8 of renewable sources of energy or water,

**Commented [MY4]:** More cleanup -- b/c (1) etc define the scope of the analyses, no need to limit the scope in the introductory paragraph.

9       (2) where renewable energy is proposed, an engineering study showing  
10 that the improvements are feasible;

11       (3) where resilience improvements are proposed, certification by a  
12 licensed professional engineer stating that the qualified improvements will  
13 result in improved resilience in accordance with local, state, or nationally  
14 recognized building standards; or

15       (4) for new construction, certification by a licensed professional  
16 engineer or engineering firm stating that the proposed qualified improvements  
17 will enable the project to exceed the energy efficiency or water efficiency or  
18 renewable energy or water usage requirements of the current building code.

**Commented [MY5]:** Many communities have expressed a desire to increase resiliency, but have no enacted such standards. Fortunately, there are many national building codes that various entities have enacted to deal with resiliency, whether storm-related, grid resilience, etc. Ultimately it will be up to the local government or a state agency/administrator to determine whether and what resilience improvements will be allowed, but again, there are plenty of examples that can be cited and utilized.

19       (c) A written agreement shall provide that:

20       (1) The length of time allowed for the property owner to repay the  
21 assessment shall not exceed the life expectancy of the project. In instances

1       where multiple projects have been installed, the length of time shall not exceed  
2       the average lifetime of all projects, weighted by cost.

3       (2) Notwithstanding any other provision of law:

4       (A) A lien under this section:

5       i) is a first and prior lien on the property, subordinate only to a lien for  
6       property taxes, from the date on which the notice of special assessment is  
7       recorded until the assessment, interest, or penalty is paid; and  
8       (ii) runs with the land, and that portion of the assessment under the  
9       assessment contract that is not yet due shall not be accelerated or extinguished  
10       by foreclosure of a property tax lien or any other foreclosure.

11       At the time of a transfer of property ownership including foreclosure,  
12       the past due balances of any special assessment under this subchapter shall be  
13       due for payment, but future payments shall continue as a lien on the property.

14       (B) In the event of a foreclosure action, the past due balances  
15       described in subdivision (A) of this subdivision (2), shall include all payments  
16       on an assessment under this subchapter that are due and unpaid as of the date  
17       the action is filed, and all payments on the assessment that become due after  
18       that date and that accrue up to and including the date title to the property is  
19       transferred to the mortgage holder, the lien holder, or a third party in the  
20       foreclosure action, shall be paid in order for title to transfer. The person or  
21       entity acquiring title to the property in the foreclosure action shall be

**Commented [MY6]:** These 2 provisions are the essential elements of a CPACE program for the purpose of rating agencies and capital markets. This is the legal statement of a C-PACE lien, and from that flows the procedural or title consequences that are narrative and which I have struck b/c, first and foremost, the legal statement and framework has to be stated. This is standard throughout the country.

**Commented [MY7]:** Unnecessary in light of addition above

1 responsible for payments on the assessment that become due after the date of  
2 such acquisition.

3 (3) A participating municipality capital provider shall disclose to  
4 participating property owners each of the following:  
5     (A) the risks associated with participating in the program, including  
6 risks related to the failure of participating property owners to make payments  
7 and the risk of foreclosure; and  
8     (B) the provisions of subsection (h) of this section that pertain to  
9 prepayment of the assessment.

10 (d) A written agreement or notice of an agreement and the analysis  
11 performed pursuant to subsection (b) of this section shall be filed with the clerk  
12 of the applicable municipality for recording in the land records of that  
13 municipality and shall be disclosed to potential buyers prior to transfer of  
14 property ownership. Personal financial information provided to a municipality  
15 by a participating property owner or potential participating property owner  
16 shall not be subject to disclosure as set forth in 1 V.S.A. § 317(e)(7). If a  
17 notice of agreement is filed instead of the full written agreement, the notice  
18 shall attach the analysis performed pursuant to subsection (b) of this section  
19 and shall include at least each of the following:

- 20     (1) the name of the property owner as grantor;  
21     (2) the name of the municipality as grantee;

**Commented [MY8]:** Unnecessary in light of addition above re running with the land and non-extinguishment

**Commented [MY9]:** This should be the responsibility of the capital provider, not the municipality, because arguably an omission, however unintentional, places legal liability on the municipality. Disclosures should be, as they are in all financing transactions, between the entities providing and receiving the financing.

**Commented [MY10]:** It is very important to understand that commercial transactions are far different than residential. They are arms length. They will, under the statute, require lender consent. It is the rule, rather than the exception, that they are represented by counsel. All this means is that there is a rigor and analysis to CPACE that is even more rigorous than a normal commercial financing transaction, because in no other commercial financing does a third party have the right to review and veto another form of financing.

**Commented [MY11]:** The analysis itself may be protected as trade or business proprietary knowledge and moreover, it creates a situation where an acquiring property owner could question a municipality's imposition of a lien. Rather than get into issues of immunity etc, just remove the requirement altogether as cleaner. If an acquiring buyer wants to know more about the improvements done, that can be part of their due diligence with the selling property owner.

- 1        (3) the date of the agreement;
- 2        (4) a legal description of the real property against which the assessment
- 3        is made pursuant to the agreement;
- 4        (5) the amount of the assessment and the period during which the
- 5        assessment will be made on the property;
- 6        (6) a statement that the assessment will remain a lien on the property
- 7        until paid in full or released; and
- 8        (7) the location at which the original agreement may be examined.
- 9        (e) Prior to entering into the written assessment contract, the property
- 10      owner shall obtain and furnish to the local government a written statement,
- 11      executed by each holder of a mortgage or deed of trust on the property
- 12      securing indebtedness, in their sole and absolute discretion, that consents to the
- 13      assessment and indicates that the assessment does not constitute an event of
- 14      default under the mortgage or deed of trust.
- 15      (f) The combined amount of the assessment plus any outstanding mortgage
- 16      obligations for the property shall not exceed 90 percent of the assessed value of
- 17      that property.
- 18      (g) With respect to an agreement under this section:
- 19      (1) the assessments to be repaid under the agreement, when calculated
- 20      as if they were the repayment of a loan, shall not violate 9 V.S.A. §§ 41a, 43,
- 21      44, and 46–50; and

1                   (2) the maximum length of time for the owner to repay the assessment  
2                   shall not exceed 30 years.

3                   (h) For projects under subchapter 2 of this chapter, there shall be no penalty  
4                   or premium for prepayment of the outstanding balance of an assessment under  
5                   this subchapter if the balance is prepaid in full. Projects under this subchapter  
6                   3 are not subject to these provisions, but shall be determined by the private  
7                   agreement for financing of improvements.

8                   (i) Property may be eligible for financing if otherwise qualified  
9                   improvements were completed and operational not more than 36 months prior  
10                   to submission of the application to the program. Waivers to the 36-month  
11                   requirement may be granted in the sole discretion of the program  
12                   administrator.

13                   § 3277. PROGRAM ADMINISTRATOR

14                   (a) C-PACE Program Administration.

15                   (1) The entity that administers the C-PACE Program under this  
16                   subchapter shall be referred to as the Program Administrator.

17                   (2) A municipality that has adopted a C-PACE ordinance may:

18                   (A) Enter into a contract with the AGENCY for an entity to serve as  
19                   the Program Administrator and to administer the functions of the C-PACE  
20                   Program for the municipality, or

**Commented [MY12]:** I suggest simply using the term Program Admin which can encompass a state entity, a third party, or a local government, and conforming the rest of the text to follow. This provides flexibility in moving forward with the CPACE program, without having to figure as part of this legislation whether and which state entity, source of funding, etc.

1                   (B) Serve as the Program Administrator itself, to administer the  
2                   functions of a C-PACE Program, including entering into C-PACE agreements  
3                   with commercial property owners in its jurisdiction and collecting C-PACE  
4                   assessments.

5                   (b) Model documents; educational materials. The AGENCY Program  
6                   Administratorshall develop and provide to municipalities model C-PACE  
7                   ordinances, model C-PACE agreements, program guidelines, and other model  
8                   forms and documents and educational materials for use by municipalities,  
9                   property owners and capital providers in the implementation of C- PACE  
10                   programs.

**Commented [MY13]:** This would be the responsibility of the Agency or the local government acting as administrator

11                   (c) The AGENCY Program Administrator may:  
12                   (1) collect fees necessary to administer the C-PACE programenter into  
13                   a contract with a C PACE municipality where the AGENCY shall serve as the  
14                   Program Administrator in the municipality;

**Commented [MY14]:** Redundant with (2)(A) above

15                   (2) subcontract with one or more third-parties to perform part or all of  
16                   the duties of a Program Administrator)collect fees necessary to administer the  
17                   C PACE program; and  
18                   (3) subcontract with one or more third parties to perform part or all of  
19                   the duties of a Program Administrator on behalf of the AGENCY.

20                   (d) Other than the fulfillment of its obligations specified in a C-PACE  
21                   agreement, neither the program administrator AGENCY nor a municipality has

1       any liability to a commercial property owner for or related to energy savings or  
2       resilience improvements financed under a C-PACE Program.

3       Sec. 2. 24 V.S.A. § 3263 is amended to read:

4       § 3263. COSTS OF OPERATION OF DISTRICT

5       The owners of real property who have entered into written agreements with  
6       the municipality under section 3262 or section 3276 of this title shall be  
7       obligated to cover the costs of operating the district. Notwithstanding its  
8       ability to charge fees to cover the its operating costs under this section, a  
9       municipality may use other available funds to operate the district

**Commented [MY15]:** Isn't this kind of open-ended? What if there is only one property owner and he District decides to throw itself a party? If they delegate the responsibilities to the Agency, what does section mean? In reality, a program guide can create a program with minimal duties of a local gov't but where receiving a \$50k fee at closing for a few hours of work is a good ROI.

10      Sec. 3. 24 V.S.A. § 3264 is amended to read:

11      § 3264. RIGHTS OF PROPERTY OWNERS

12       A property owner who has entered into a written agreement with the  
13       municipality under section 3262 or section 3276 of this title may enter into a  
14       private agreement for the installation or construction of a project relating to  
15       renewable energy, as defined in 30 V.S.A. § 8002(17), or relating to energy  
16       efficiency as defined in section 3267 of this title.

17      Sec. 4. 24 V.S.A. § 3265 is amended to read:

18      § 3265. LIABILITY OF MUNICIPALITY

19       (a) A municipality that incurs indebtedness for or otherwise finances  
20       projects under this subchapter shall not be liable for the failure of performance  
21       of a project.

3 (c) A municipality that enters into a written agreement with a property  
4 owner under subchapter 3 of this chapter shall not incur any indebtedness or  
5 otherwise finance projects under this chapter, nor shall be liable for the failure  
6 of the performance of a project, nor pledge the full faith and credit of the  
7 municipality.

8 Sec. 5. 24 V.S.A. § 3268 is amended to read:

9           § 3268. RELEASE OF LIEN

10 (a) A municipality shall release a participating property owner of the lien  
11 on the property against which the assessment under this subchapter or  
12 subchapter 3 of this chapter is made upon full payment of the value of the  
13 assessment.

14 (b) Notice of a release of a lien for an assessment under this subchapter or  
15 subchapter 3 of this chapter shall be filed with the clerk of the applicable  
16 municipality for recording in the land records of that municipality.

17 Sec. 6. 24 V.S.A. § 3255 is amended to read:

18        § 3255. COLLECTION OF ASSESSMENTS; LIENS

19 (a) Special assessments under this chapter shall constitute a lien on the  
20 property against which the assessment is made in the same manner and to the  
21 same extent as taxes assessed on the grand list of a municipality, and all

1 procedures and remedies for the collection of taxes shall apply to special  
2 assessments.

3 (b) Notwithstanding subsection (a) of this section, a lien for an assessment  
4 under subchapter 2 of this chapter shall be subordinate to all liens on the  
5 property in existence at the time the lien for the assessment is filed on the land  
6 records, shall be subordinate to a first mortgage on the property recorded after  
7 such filing, and shall be superior to any other lien on the property recorded  
8 after such filing. In no way shall this subsection affect the status or priority of  
9 any municipal lien other than a lien for an assessment under subchapter 2 of  
10 this chapter. A lien for an assessment under subchapter 3 of this chapter shall  
11 be exempt from the provisions of this section and, upon receipt of consent  
12 from lenders, pursuant to subsection (e) of section 3276, shall not be  
13 subordinate to all liens on the property in existence at the time the lien for the  
14 assessment is filed on the land records.

15 Sec. 7. 9 V.S.A. § 46 is amended to read:

16 § 46. EXCEPTIONS

17 Section 43 of this title, relating to deposit requirements, and section 45 of  
18 this title, relating to prepayment penalties, shall not apply and the parties may  
19 contract for a rate of interest in excess of the rate provided in section 41a of  
20 this title in the case of:



1

\_\_\_\_\_  
2 Senator \_\_\_\_\_

3 FOR THE COMMITTEE