

House Study Bill 320 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON WAYS
AND MEANS BILL BY CHAIRPERSON
KAUFMANN)

A BILL FOR

- 1 An Act allowing local governments to establish economic property
- 2 assessed capital expenditure programs.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. LEGISLATIVE FINDING AND INTENT — ECONOMIC
2 PROPERTY ASSESSED CAPITAL EXPENDITURE PROGRAM.

3 1. It is the intent of the general assembly to authorize
4 local governments to establish economic property assessed capital
5 expenditure programs, as defined in the section of this Act
6 enacting section 403B.1, to ensure that free and willing
7 owners of agricultural, commercial, industrial, or multifamily
8 residential property may obtain low-cost, long-term financing for
9 qualifying improvements.

10 2. The general assembly finds that the increase in economic
11 development, lower insurance costs, and lower disaster and
12 emergency response costs from implementing economic property
13 assessed capital expenditure programs serves as a valid public
14 purpose for permitting local governments to adopt the programs.

15 3. The general assembly further finds that economic property
16 assessed capital expenditure programs lead to decreased energy
17 and water costs and encourage water and energy sustainability.

18 Sec. 2. NEW SECTION. **403B.1 Definitions.**

19 For the purposes of this chapter:

20 1. "Assessment agreement" means a written contract between
21 an economic property owner and a local government with an
22 established E-PACE program that states the terms of the property
23 owner's qualified project as required by this chapter.

24 2. "Capital provider" means a private third-party entity,
25 including its designee, successor, and assigns, that provides or
26 funds E-PACE financing, including refinancing qualified projects,
27 under a financing agreement.

28 3. "E-PACE assessment" means a voluntary assessment imposed
29 by a local government on real property located within the
30 boundaries of a region for the purpose of financing an E-PACE
31 program.

32 4. a. "Economic property" means any of the following:

33 (1) Privately owned commercial, industrial, or agricultural
34 real property.

35 (2) Privately owned residential property consisting of five

1 or more dwelling units.

2 *b.* "Economic property" may include property owned by
3 nonprofit, charitable, or religious organizations, one or more
4 owner-occupied or rental condominium units affiliated with a
5 hotel, a leasehold of privately owned property, or a leasehold
6 of property owned by a governmental entity used for the purposes
7 of this chapter.

8 5. "Economic property assessed capital expenditure program"
9 or "E-PACE program" means an economic property assessed capital
10 expenditure program established pursuant to section 403B.4.

11 6. "Financing agreement" means a contract under which a
12 property owner agrees to repay a capital provider for E-PACE
13 financing, including but not limited to details of finance
14 charges, fees, debt servicing, accrual of interest and penalties,
15 and terms relating to treatment of prepayment and partial payment
16 billing, collection, and enforcement of E-PACE financing.

17 7. "Local government" means a county, city, or other
18 political subdivision of this state.

19 8. "Program administrator" means a local government
20 department or individual designated to administer an E-PACE
21 program or a private independent third party designated by the
22 local government to administer an E-PACE program in conformance
23 with the administration procedures provided in this chapter.

24 9. "Program guidebook" means a comprehensive document that
25 illustrates the applicable program and establishes appropriate
26 guidelines, specifications, underwriting and approval criteria,
27 and standard application forms consistent with the administration
28 of an E-PACE program pursuant to this chapter. A "program
29 guidebook" shall include all of the following:

30 *a.* A form for an assessment contract between the local
31 government and a property owner for specifying the terms of
32 an E-PACE assessment, financing provided by a third party, and
33 remedies for default or foreclosure.

34 *b.* A form for a notice of assessment to be used by the local
35 government.

1 c. A form for a notice of assignment of an assessment between
2 a local government and a capital provider.

3 10. "Qualified improvement" means a permanent improvement
4 installed and affixed to economic property and intended to do one
5 or more of the following:

6 a. Decrease energy consumption or demand through the use
7 of efficiency technologies, products, components, materials, or
8 activities.

9 b. Support the production of renewable energy, including the
10 use of a product, device, or interacting group of products or
11 devices that generates electricity, provides thermal energy, or
12 regulates temperature.

13 c. Decrease water consumption or demand and increase
14 water conservation and storage through the use of efficiency
15 technologies, products, or activities.

16 d. Reduce or eliminate lead from water that may be used for
17 drinking or cooking.

18 e. Increase water or wastewater resilience, including through
19 storm water management and flood mitigation.

20 f. Increase wind resistance, energy storage, off-grid
21 electricity production, or other improvements to reduce the
22 environmental impacts or land usage approved by the local
23 government that established the E-PACE program.

24 11. "Qualified project" means a project approved by the
25 administrator of an E-PACE program, involving the installation
26 or modification of a qualified improvement, including new
27 construction or the adaptive reuse of eligible property with a
28 qualified improvement.

29 **Sec. 3. NEW SECTION. 403B.2 E-PACE assessments.**

30 1. A local government may impose an E-PACE assessment to
31 repay the financing of a qualified project on economic property
32 located within the boundaries governed by the local government.

33 2. A local government shall not impose an E-PACE assessment
34 to repay the financing of the purchase or installation of
35 products or devices not permanently affixed to economic property.

1 3. A local government may impose an E-PACE assessment only
2 after the local government approves a project application related
3 to the property to be assessed pursuant to section 403B.6.
4 The E-PACE assessment shall be created through an assessment
5 agreement between the local government and the owner of the
6 property to be assessed.

7 Sec. 4. NEW SECTION. **403B.3 Authorizations.**

8 1. A local government may establish an E-PACE program in
9 accordance with this section.

10 2. A local government that establishes an E-PACE program may
11 enter into an assessment agreement with an economic property
12 owner to impose an E-PACE assessment on the owner's property as
13 the means to repay the owner's financing of a qualified project
14 on that property.

15 3. a. A local government may administer an E-PACE program or
16 delegate administration of the program pursuant to a third party.

17 b. If a local government delegates administration of an
18 E-PACE program to a third party, then the contract delegating
19 administrative authority shall require the third party to
20 reimburse the local government for costs associated with
21 monitoring the program, imposing E-PACE assessments, and billing
22 and collecting payments on behalf of the third party.

23 4. The financing to pay for E-PACE assessments may include
24 but is not limited to one or more of the following:

25 a. The cost of materials and labor necessary for the
26 installation or modification of a qualified improvement.

27 b. Permit fees.

28 c. Inspection fees.

29 d. Lender fees.

30 e. E-PACE program application and administration fees.

31 f. Project development and engineering fees.

32 g. Interest reserves.

33 h. Capitalized interest, in an amount determined by the
34 economic property owner and the third party providing financing
35 for an E-PACE program's qualified project.

1 i. Other fees or costs incurred by the property owner
2 incidental or ancillary to the installation, modification, or
3 improvement on a specific or pro rata basis, as determined by the
4 local government.

5 5. An assessment agreement constitutes written notice to the
6 economic property owner subject to the assessment agreement that
7 the owner may be responsible for the payment of any remaining
8 principal balance of the assessment upon the refinance or sale of
9 the property unless the remaining principal balance is assumed
10 by the acquiring property owner. The local government shall
11 require each economic property owner entering into an assessment
12 agreement to acknowledge, in writing, the notice as part of the
13 execution of the assessment agreement.

14 Sec. 5. NEW SECTION. **403B.4 Procedures to establish an**
15 **E-PACE program.**

16 1. To establish an E-PACE program, a local government must do
17 all of the following:

18 a. Adopt a resolution of intent that includes all of the
19 following:

20 (1) A statement that the local government intends to
21 authorize direct financing between property owners and capital
22 providers under a financing agreement as the means to finance
23 qualified projects.

24 (2) A statement that the local government intends to
25 authorize E-PACE assessments, entered into voluntarily by a
26 property owner with the local government by means of a written
27 contract, to repay the financing for qualified projects available
28 to property owners.

29 (3) A description of the types of projects that may qualify
30 for E-PACE assessments.

31 (4) A description of the boundaries of the region.

32 (5) A description of the proposed arrangements for
33 administration of the E-PACE program according to the provisions
34 of this chapter.

35 (6) A statement of the time and place for a public hearing on

1 the proposed E-PACE program as required in paragraph "b", of this
2 subsection.

3 (7) A statement designating the person or entity charged
4 with administering the E-PACE program and executing assessment
5 agreements.

6 b. Hold a hearing for the public to comment on the proposed
7 E-PACE program as outlined in the resolution of intent. If
8 two or more local governments have contracted to work together
9 on an E-PACE program, then only one local government shall be
10 required to hold a hearing for public comment on a proposed
11 E-PACE program.

12 c. Subsequent to holding a hearing pursuant to paragraph "b",
13 adopt a resolution establishing the E-PACE program and its terms.

14 d. Adopt a program guidebook consistent with the resolution
15 adopted pursuant to paragraph "c".

16 2. a. Subject to the terms of the resolution establishing
17 the E-PACE program as provided in subsection 1, paragraph "c", of
18 this section, the local government may amend an E-PACE program by
19 resolution.

20 b. If a local government amends an E-PACE program pursuant
21 to paragraph "a", the local government shall amend its program
22 guidebook related to the E-PACE program accordingly.

23 c. The program administrator may amend the language in the
24 program guidebook that does not conflict with the resolution.

25 3. The enactment of a resolution establishing an E-PACE
26 program and its terms shall allow a local government to place
27 E-PACE assessments on property without any additional action by
28 the local government.

29 4. For the purposes of implementing and administering an
30 E-PACE program, a local government may do either of the
31 following:

32 a. Designate a local government official to administer the
33 E-PACE program.

34 b. Delegate or contract for professional or administrative
35 services necessary to administer the program on a nonexclusive

1 basis.

2 5. A local government is authorized to impose service fees
3 to offset the actual and reasonable costs of administering an
4 E-PACE program. A fee of no more than five hundred dollars may
5 be charged at the time of a property owner's application. In
6 addition, a one-time servicing fee for approved applications may
7 be calculated as one percent of the total amount financed, not to
8 exceed fifty thousand dollars.

9 Sec. 6. NEW SECTION. **403B.5 Program requirements.**

10 1. Each property owner requesting to participate in an
11 E-PACE program shall provide a statement certifying all of the
12 following:

13 a. The property owner is the legal owner of the benefiting
14 property.

15 b. The property owner is not delinquent on any mortgage or
16 property tax payments that affect the benefiting property.

17 c. The property owner is not insolvent or in bankruptcy
18 proceedings.

19 d. The title of the benefiting property is not in dispute.

20 2. The total debt secured by a property participating
21 in a local government's E-PACE program, including any E-PACE
22 assessments from the E-PACE program, shall not exceed ninety
23 percent of the fair market value of the property as stabilized.

24 3. An assessment taken pursuant to an E-PACE program shall
25 not exceed thirty-five percent of the fair market value of the
26 property.

27 4. A determination of fair market value shall be established
28 by an appraisal completed no more than twenty-four months prior
29 to the time of a property owner's application to an E-PACE
30 program.

31 5. The term of an E-PACE assessment shall not exceed the life
32 of the longest lived qualifying improvement financed in a project
33 that is the basis for the E-PACE assessment. The standards
34 for determining a qualifying improvement's useful life shall be
35 contained in the E-PACE program's program guidebook.

1 6. Prior to approving any qualified projects for an E-PACE
2 program, a local government shall do all of the following:

3 a. Provide a description of each type of project that is
4 eligible for the E-PACE program.

5 b. Identify the person or entity that will be authorized to
6 enter into written contracts on behalf of the local government.

7 c. Provide a statement explaining the manner in which
8 property will be assessed and how assessments will be collected.

9 d. Outline the procedures for billing and collecting E-PACE
10 assessments and remedies for enforcement of a delinquent E-PACE
11 assessment.

12 Sec. 7. NEW SECTION. **403B.6 Application and review.**

13 1. A local government participating in an E-PACE program
14 shall establish the form and manner a person may apply to
15 commence a project under the E-PACE program, and shall establish
16 a review process to evaluate project applications for E-PACE
17 program financing. At a minimum, an application shall require
18 an applicant to do all of the following:

19 a. Demonstrate that the project is intended to provide one or
20 more of the following benefits to the public:

21 (1) Energy or water resource conservation.

22 (2) Reduced public health costs or risk.

23 (3) Reduced public emergency response cost or risk.

24 b. For an existing building, provide an analysis by
25 a licensed engineering firm, engineer, or other qualified
26 professional listed in the program guidebook. The author of the
27 analysis shall certify any of the following as applicable:

28 (1) The proposed improvements are intended to result in
29 either more efficient use or conservation of energy or water or
30 the to address safe drinking water.

31 (2) The proposed improvements are intended to improve
32 resilience.

33 c. For new construction, provide certification by a licensed
34 engineering firm, engineer, or other qualified professional
35 listed in the program guidebook stating that the proposed

1 qualified improvements are designed to enable the project to do
2 any of the following:

3 (1) Exceed the current building code's requirements for
4 energy efficiency, water efficiency, renewable energy, or water
5 quality.

6 (2) Increase resilience for water, wastewater, storms, storm
7 water, wind, or other approved resilience projects, or improve
8 energy storage, microgrids, or reduce land use impacts.

9 (3) Satisfy other requirements listed in the program
10 guidebook to be considered eligible as a qualified improvement as
11 defined under this chapter.

12 d. Furnish a written statement, executed and acknowledged by
13 each holder of a mortgage or deed of trust securing indebtedness
14 on the property to be improved through the E-PACE program,
15 consenting to the E-PACE assessment, and indicating that the
16 E-PACE assessment shall not constitute a default under the
17 mortgage or deed of trust.

18 2. A local government shall do all of the following:

19 a. Establish a process for reviewing and approving
20 applications for financing. The local government may require
21 a capital provider to certify to the local government, in
22 accordance with a process approved by the local government, that
23 the property owner and the project meet the requirements of this
24 chapter and the program guidebook and qualify for financing.

25 b. Execute and record each assessment agreement authorized by
26 the local government's program administrator.

27 c. Execute and record each notice of assessment created for
28 a qualified project authorized by the local government's program
29 administrator.

30 d. Execute and record each assignment of an assessment
31 agreement to a capital provider and each notice of assignment
32 of assessment authorized by the local government's regional
33 administrator, with the county recorder where the property
34 subject to the assessment agreement is located.

35 3. Upon completion of a qualified project, the property owner

1 of the qualified project, or the owner's legal representative,
2 shall provide written confirmation that the qualified project was
3 properly completed and is operating as intended.

4 Sec. 8. NEW SECTION. **403B.7 Collections pursuant to E-PACE**
5 **program.**

6 1. a. A local government shall do one of the following in
7 relation to E-PACE assessment liens for a qualified project:

8 (1) Bill, collect, and enforce an E-PACE assessment lien at
9 the same time and in the same manner as a property tax.

10 (2) Assign the rights to bill, collect, and enforce an E-PACE
11 assessment to a capital provider.

12 b. A local government shall not make an assignment pursuant
13 to paragraph "a", subparagraph (2), after the execution of an
14 assessment agreement relating to the qualified project for which
15 the E-PACE assessment is being imposed.

16 c. A capital provider assigned the rights to bill, collect,
17 and enforce an E-PACE assessment may enforce the E-PACE
18 assessment in the same manner as prescribed in chapter 654 for
19 a mortgage, except assessments not yet due may not be accelerated
20 or eliminated by foreclosure.

21 2. In any action to enforce an E-PACE assessment lien by
22 either a local government or a capital provider, any outstanding
23 and delinquent property taxes must be satisfied prior to the
24 delinquent amounts related to an E-PACE assessment.

25 Sec. 9. NEW SECTION. **403B.8 Limitations of liability.**

26 A local government, the local government's employees, and the
27 local government's officers are not liable at law or equity for
28 actions taken pursuant to this chapter, except in cases of gross
29 negligence, recklessness, or willful misconduct.

30 Sec. 10. NEW SECTION. **403B.9 Financing E-PACE projects.**

31 Financing for a qualified project may authorize a property
32 owner to do one or more of the following:

33 1. Directly purchase the equipment and materials necessary
34 for the qualified project.

35 2. Contract, including through a lease agreement, power

1 purchase agreement, or other service contract, for the equipment
2 and materials necessary for the qualified project.

3 Sec. 11. NEW SECTION. **403B.10 Required recording.**

4 1. A local government that authorizes financing through
5 E-PACE assessments pursuant to this chapter shall file a written
6 notice of assessment in the recorder's office of the county in
7 which the property subject to the E-PACE assessment is located.

8 The notice must contain all of the following:

- 9 a. The legal description of the property.
- 10 b. The name of each property owner.
- 11 c. The amount of the assessment.
- 12 d. The date on which the assessment was created.
- 13 e. The principal amount of the assessment.
- 14 f. The term of the assessment.
- 15 g. A copy of the assessment agreement.
- 16 h. A reference to this chapter authorizing the E-PACE
17 assessment on the property.

18 2. A local government shall file and record each executed
19 assignment of an assessment agreement and notice of assignment of
20 assessment.

21 3. A local government may delegate recording responsibilities
22 under subsection 1 for a qualified project to a capital provider
23 if the local government assigned its rights to the E-PACE
24 assignment related to that qualified project to the capital
25 provider.

26 Sec. 12. NEW SECTION. **403B.11 Order of liens.**

27 1. Notwithstanding contrary provisions of law:

28 a. An E-PACE assessment shall be considered a first and
29 prior lien against the property on which the E-PACE assessment
30 is imposed from the date on which the notice of assessment is
31 recorded until the assessment and all associated interest and
32 penalties are paid in full.

33 b. An E-PACE assessment shall be considered junior to any
34 local government property tax or ad valorem tax.

35 2. An E-PACE assessment shall run with the land, and any

1 portion of the E-PACE assessment under the assessment agreement
2 that is not yet due shall not be accelerated or eliminated by
3 foreclosure of a property tax lien or other foreclosure.

4 3. A provision of a deed of trust, mortgage, or other
5 agreement between a lienholder and a property owner providing
6 for the acceleration of any payment under the deed of trust,
7 mortgage, or agreement solely as the result of entering into an
8 agreement to finance an E-PACE assessment is unenforceable as to
9 an assessment agreement.

10 4. A lienholder or loan servicer may increase the monthly
11 amount held in escrow for an economic property as required to
12 annually pay an E-PACE assessment related to that property.

13 Sec. 13. NEW SECTION. **403B.12 Governmental entities —**
14 **contracts — joint administration.**

15 1. A local government implementing an E-PACE program pursuant
16 to this chapter may contract with another local government
17 in accordance with chapter 28E, including a county assessor,
18 to perform the duties of the local government relating to
19 the billing, collection, enforcement, and remittance of E-PACE
20 assessments imposed pursuant to this chapter.

21 2. A combination of local governments may agree in accordance
22 with chapter 28E to implement an E-PACE program jointly.

23 3. A local government may contract with a third party on a
24 nonexclusive basis.

25 4. If a local government contracts with a third party
26 including but not limited to another local government to
27 administer an E-PACE program, then other third parties shall be
28 allowed to enter into a contract to administer the E-PACE program
29 on the same terms if the contracting local government determines
30 the E-PACE program requires a third-party administrator in the
31 future.

32 Sec. 14. NEW SECTION. **403B.13 Compulsion prohibited.**

33 A local government that establishes an E-PACE program
34 shall not make the issuance of a permit, license, or other
35 authorization from the local government to a property owner

1 contingent on the person entering into an assessment agreement
2 to repay the financing of a qualified project pursuant to this
3 chapter, or otherwise compel a property owner to enter into an
4 assessment agreement.

5 Sec. 15. NEW SECTION. **403B.14 Full faith and credit.**

6 The state and each local government shall not use public funds
7 to fund or repay a loan between a capital provider and a property
8 owner. This chapter shall not be construed to pledge, offer,
9 or encumber the full faith and credit of a local government. A
10 local government shall not pledge its full faith and credit for a
11 lien amount through an E-PACE program.

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill allows local governments to establish economic
16 property assessed capital expenditure (E-PACE) programs.

17 The bill declares the general assembly's intent to authorize
18 local governments to establish E-PACE programs to ensure that
19 free and willing owners of agricultural, commercial, industrial,
20 or multifamily residential property may obtain
21 low-cost, long-term financing for qualifying improvements.

22 The bill declares the general assembly's finding that the
23 increase in economic development, lower insurance costs, and
24 lower disaster and emergency response costs from implementing
25 E-PACE programs serves as a valid public purpose for permitting
26 local governments to adopt the programs, and that E-PACE programs
27 lead to decreased energy and water costs and encourage water and
28 energy sustainability.

29 The bill defines "assessment agreement", "capital
30 provider", "E-PACE assessment", "economic property", "economic
31 property assessed capital expenditure program" or "E-PACE
32 program", "financing agreement", "local government", "program
33 administrator", "program guidebook", "qualified improvement", and
34 "qualified project".

35 The bill authorizes a local government to establish E-PACE

1 programs.

2 The bill allows a local government to impose E-PACE
3 assessments on economic properties to repay the financing of
4 a qualified project on economic property located within the
5 boundaries governed by the local government.

6 The bill prohibits a local government from imposing an E-PACE
7 assessment to repay the financing of the purchase or installation
8 of products or devices not permanently affixed to economic
9 property.

10 The bill allows a local government to impose an E-PACE
11 assessment only after the local government approves a project
12 application related to the property to be assessed. The E-PACE
13 assessment shall be created through a written contract between
14 the local government and the owner of the property to be
15 assessed.

16 The bill allows a local government that establishes an E-PACE
17 program to enter into an assessment agreement with an economic
18 property owner to impose an E-PACE assessment on the owner's
19 property as the means to repay the owner's financing of a
20 qualified project on that property.

21 The bill allows a local government may administer an E-PACE
22 program or delegate administration of the program to a third
23 party.

24 The bill requires, if a local government delegates
25 administration of an E-PACE program to a third party, the
26 contract delegating administrative authority to require the third
27 party to reimburse the local government for costs associated with
28 monitoring the program, imposing E-PACE assessments, and billing
29 and collecting payments on behalf of the third party.

30 The bill allows financing to pay for E-PACE assessments to
31 include but not be limited to the cost of materials and labor
32 necessary for the installation or modification of a qualified
33 improvement; permit fees; inspection fees; lender fees; E-PACE
34 program application and administration fees; project development
35 and engineering fees; interest reserves; capitalized interest,

1 in an amount determined by the economic property owner and the
2 third party providing financing for an E-PACE program's qualified
3 project; and other fees or costs incurred by the property owner
4 incidental or ancillary to the installation, modification, or
5 improvement on a specific or pro rata basis, as determined by the
6 local government.

7 The bill provides that an assessment agreement constitutes
8 written notice to the economic property owner subject to
9 the assessment agreement that the owner may be responsible
10 for the payment of any remaining principal balance of the
11 assessment upon the refinance or sale of the property unless the
12 remaining principal balance is assumed by the acquiring property
13 owner. The bill requires each local government to require each
14 economic property owner entering into an assessment agreement to
15 acknowledge, in writing, the notice as part of the execution of
16 the assessment agreement.

17 The bill requires a local government, when establishing an
18 E-PACE program, to adopt a resolution of intent that includes a
19 statement that the local government intends to authorize direct
20 financing between property owners and capital providers as the
21 means to finance qualified projects; a statement that the local
22 government intends to authorize E-PACE assessments, entered into
23 voluntarily by a property owner with the local government by
24 means of a written contract, to repay the financing for qualified
25 projects available to property owners; a description of the
26 types of projects that may qualify for E-PACE assessments; a
27 description of the boundaries of the region; a description of the
28 proposed arrangements for administration of the E-PACE program;
29 a statement of the time and place for a public hearing on the
30 proposed E-PACE program; and a statement designating the person
31 or entity charged with administering the E-PACE program and
32 executing assessment agreements.

33 The bill requires a local government establishing an E-PACE
34 program to hold a hearing for the public to comment on the
35 proposed E-PACE program as outlined in the resolution of intent.

1 The bill provides that if two or more local governments have
2 contracted to work together on an E-PACE program, then only one
3 local government shall be required to hold a hearing for public
4 comment on a proposed E-PACE program.

5 The bill requires a local government establishing an E-PACE
6 program to adopt a resolution establishing the E-PACE program
7 and its terms after holding a public hearing relating to the
8 establishment of the E-PACE program.

9 The bill requires a local government to adopt a program
10 guidebook that is consistent with the resolution establishing the
11 E-PACE program.

12 The bill allows a local government to amend an E-PACE program
13 by resolution, subject to the terms of the resolution the local
14 government adopted after holding a public hearing relating to the
15 establishment of the E-PACE program. The bill requires a local
16 government that amends an E-PACE program via resolution to amend
17 the program guidebook related to that E-PACE program accordingly.
18 However, the bill allows the program administrator to amend the
19 language in the program guidebook that does not conflict with the
20 resolution.

21 The bill allows a resolution establishing an E-PACE program
22 and its terms to allow the local government to place voluntary
23 E-PACE assessments on property without any additional action by
24 the local government.

25 For the purposes of implementing and administering an E-PACE
26 program, the bill allows a local government to either designate
27 a local government official to administer the E-PACE program, or
28 delegate or contract for professional or administrative services
29 necessary to administer the E-PACE program on a nonexclusive
30 basis.

31 The bill authorizes local governments to impose service fees
32 to offset the actual and reasonable costs of administering an
33 E-PACE program. A one-time fee of no more than \$500 may be
34 charged at the time of a property owner's application. In
35 addition, a servicing fee for approved applications may be

1 calculated as one percent of the total amount financed, not to
2 exceed \$50,000.

3 The bill requires each property owner requesting to
4 participate in an E-PACE program to provide a statement
5 certifying the property owner is the legal owner of the
6 benefiting property, the property owner is not delinquent on
7 any mortgage or property tax payments that affect the benefiting
8 property, the property owner is not insolvent or in bankruptcy
9 proceedings, and the title of the benefiting property is not in
10 dispute.

11 The bill prohibits the total debt secured by a property
12 participating in a local government's E-PACE program, including
13 any E-PACE assessments from the E-PACE program, from exceeding 90
14 percent of the fair market value of the property as stabilized.

15 The bill prohibits an assessment taken pursuant to an E-PACE
16 program from exceeding 35 percent of the fair market value of the
17 property.

18 The bill requires a determination of fair market value to
19 be established by an appraisal completed no more than 24 months
20 prior to the time of a property owner's application to an E-PACE
21 program.

22 The bill prohibits the term of an E-PACE assessment from
23 exceeding the life of the longest lived qualifying improvement
24 financed in a project that is the basis for the E-PACE
25 assessment. The bill requires the standards for determining
26 a qualifying improvement's useful life to be contained in the
27 E-PACE program's program guidebook.

28 The bill requires a local government, prior to approving
29 any qualified projects for an E-PACE program, to provide a
30 description of each type of project that is eligible for the
31 E-PACE program, identify the person or entity that will be
32 authorized to enter into written contracts on behalf of the local
33 government, provide a statement explaining the manner in which
34 property will be assessed and how assessments will be collected,
35 and outline the procedures for billing and collecting E-PACE

1 assessments and remedies for enforcement of a delinquent E-PACE
2 assessment.

3 The bill requires a local government participating in an
4 E-PACE program to establish the form and manner a person may
5 apply to commence a project under the E-PACE program, and to
6 establish a review process to evaluate project applications for
7 E-PACE program financing. The bill lists several requirements
8 for E-PACE program applicants that an E-PACE program application
9 must include.

10 The bill requires a local government to establish a process
11 for reviewing and approving applications for financing. The
12 local government may require a capital provider to certify to
13 the local government, in accordance with a process approved by
14 the local government, that the property owner and the project
15 meet statutory requirements and program guidebook requirements
16 and qualify for financing.

17 The bill requires a local government to execute and record
18 each assessment agreement authorized by the local government's
19 program administrator.

20 The bill requires a local government to execute and record
21 each notice of assessment created for a qualified project
22 authorized by the local government's program administrator.

23 The bill requires a local government to execute and record
24 each assignment of an assessment agreement to a capital provider
25 and each notice of assignment of assessment authorized by
26 the local government's regional administrator, with the county
27 recorder where the property subject to the assessment agreement
28 is located.

29 The bill requires, upon completion of a qualified project,
30 the property owner who applied for the qualified project, or
31 the owner's legal representative, to provide written confirmation
32 that the qualified project was properly completed and is
33 operating as intended.

34 The bill requires a local government, in relation to E-PACE
35 assessment liens for a qualified project, to either bill,

1 collect, and enforce an E-PACE assessment lien at the same time
2 and in the same manner as a property tax, or assign the rights
3 to bill, collect, and enforce an E-PACE assessment to a capital
4 provider.

5 The bill prohibits a local government from making an
6 assignment of the rights to bill, collect, and enforce an
7 E-PACE assessment after the execution of an assessment agreement
8 relating to the qualified project for which the E-PACE assessment
9 is being imposed.

10 The bill allows a capital provider who was assigned the
11 rights to bill, collect, and enforce an E-PACE assessment to
12 enforce the E-PACE assessment in the same manner as prescribed
13 in Code chapter 654 (foreclosure of real estate mortgages) for a
14 mortgage, except assessments not yet due may not be accelerated
15 or eliminated by foreclosure.

16 The bill requires any outstanding and delinquent property
17 taxes to be satisfied prior to the delinquent amounts related to
18 an E-PACE assessment.

19 The bill limits a local government's, the local government's
20 employees', and the local government's officers' liability at law
21 or equity for actions taken pursuant to E-PACE program statutes,
22 except in cases of gross negligence, recklessness, or willful
23 misconduct.

24 The bill allows financing for a qualified project to authorize
25 a property owner to directly purchase the equipment and materials
26 necessary for the qualified project; contract, including through
27 a lease agreement, power purchase agreement, or other service
28 contract, for the equipment and materials necessary for the
29 qualified project; or both.

30 The bill requires a local government that authorizes financing
31 through E-PACE assessments to file a written notice of assessment
32 in the recorder's office of the county in which the property
33 subject to the E-PACE assessment is located. The bill requires
34 the notice to contain the legal description of the property,
35 the name of each property owner, the amount of the assessment,

1 the date on which the assessment was created, the principal
2 amount of the assessment, the term of the assessment, a copy of
3 the assessment agreement, and a reference to the Code chapter
4 authorizing the E-PACE assessment on the property.

5 The bill requires a local government to file and record each
6 executed assignment of an assessment agreement and notice of
7 assignment of assessment.

8 The bill allows a local government to delegate recording
9 responsibilities for a qualified project to a capital provider if
10 the local government assigned its rights to the E-PACE assignment
11 related to that qualified project to the capital provider.

12 The bill requires an E-PACE assessment to be considered a
13 first and prior lien against the property on which the E-PACE
14 assessment is imposed from the date on which the notice of
15 assessment is recorded until the assessment and all associated
16 interest and penalties are paid in full.

17 The bill requires an E-PACE assessment to be considered junior
18 to any local government property tax or ad valorem tax.

19 The bill makes an E-PACE assessment run with the land,
20 and prohibits any portion of the E-PACE assessment under the
21 assessment agreement that is not yet due shall not be accelerated
22 or eliminated by foreclosure of a property tax lien or other
23 foreclosure.

24 The bill makes any provision of a deed of trust, mortgage,
25 or other agreement between a lienholder and a property owner
26 providing for the acceleration of any payment under the deed of
27 trust, mortgage, or agreement solely as the result of entering
28 into an agreement to finance an E-PACE assessment unenforceable
29 as to an assessment agreement.

30 The bill allows a lienholder or loan servicer to increase
31 the monthly amount held in escrow for an economic property as
32 required to annually pay the E-PACE assessment related to that
33 property.

34 The bill allows a local government implementing an E-PACE
35 program pursuant to this chapter may contract with another local

1 government in accordance with Code chapter 28E (joint exercise
2 of governmental powers), including a county assessor, to perform
3 the duties of the local government relating to the billing,
4 collection, enforcement, and remittance of E-PACE assessments.

5 The bill allows a combination of local governments to agree in
6 accordance with Code chapter 28E to implement an E-PACE program
7 jointly.

8 The bill allows a local government to contract with a third
9 party on a nonexclusive basis.

10 If a local government contracts with a third party including
11 but not limited to another local government to administer an
12 E-PACE program, then the bill allows other third parties to enter
13 into a contract to administer the E-PACE program on the same
14 terms if the contracting local government determines it requires
15 a third-party administrator in the future.

16 The bill prohibits a local government that establishes an
17 E-PACE program from making the issuance of a permit, license, or
18 other authorization from the local government to a property owner
19 contingent on the person entering into an assessment agreement to
20 repay the financing of a qualified project, or otherwise compel a
21 property owner to enter into an assessment agreement.

22 The bill prohibits the state and each local government from
23 using public funds to fund or repay a loan between a capital
24 provider and a property owner. The bill prohibits provisions
25 being enacted in the bill from being construed to pledge, offer,
26 or encumber the full faith and credit of a local government. The
27 bill prohibits a local government from pledging its full faith
28 and credit for a lien amount through an E-PACE program.