COMMITTEE REPORT

April 19, 2016

**S. 668**

Introduced by Senators Alexander and O’Dell

S. Printed 4/19/16--S.

Read the first time April 15, 2015.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 668) to amend Title 6, relating to provisions applicable to special purpose districts and other political subdivisions; to create the South Carolina Commercial‑Property, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking lines 32-37 and inserting:

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

Amend the bill further, as and if amended, page 3, by striking lines 3-6 and inserting:

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

Amend the bill further, as and if amended, page 3, by striking lines 12-16 and inserting:

/ (9) ‘Program’ or ‘C‑PACE program’ means a program established by a governing body to administer commercial‑property assessed clean energy financing within a district. Such program may be administered by the governing body or by a third party for such program administration services. /

Amend the bill further, as and if amended, page 3, by striking lines 37‑39 and inserting:

/ to an electrical utility after January 1, 2016. A renewable energy facility also shall mean any incremental capacity installed after January 1, 2016, that delivers energy from a renewable energy /

Amend the bill further, as and if amended, page 4, by striking lines 12-16 and inserting:

/ (C) A governing body shall define the scope or limitation of projects to be considered in an ordinance. /

Amend the bill further, as and if amended, page 6, by striking lines 3-13 and inserting:

/ (C) At least thirty days before the execution of a written agreement between a district and a property owner, the owner shall provide notice of the owner’s application to participate in a C‑PACE program to each mortgage lender holding a lien on the owner’s property.

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

Amend the bill further, as and if amended, page 6, by striking lines 34-43, and page 7, by striking lines 1-7 and inserting:

/ Section 6‑39‑70. (A) Subject to the consent of each existing mortgagee, obtained before execution of an agreement to participate in a C‑PACE program, the assessment levied pursuant to Section 6‑39‑60, including any interest, fees, and penalties, shall constitute a C‑PACE lien against the qualifying real property. The C‑PACE lien related to delinquent assessments shall have priority over any mortgage, provided the C‑PACE lien is perfected by filing in the office of the register of deeds of the county where the qualifying real property is located as prescribed in (B) of this section.

(B) A mortgagee form of consent for each existing mortgagee must be filed with and as an attachment to the C‑PACE lien in the office of the register of deeds of the county where the qualifying real property is located. The mortgagee form of consent must include, but is not limited to, the following:

(1) the name(s) and addresses of the qualifying real property owner(s);

(2) the name and principal address(es) of the mortgagee(s);

(3) a description of the qualifying real property;

(4) the request for a mortgagee’s consent by the qualifying real property owner(s); and

(5) the consent of the mortgagee(s).

(C) The C‑PACE lien may be paid off early, and principal reductions are permitted. Upon payment in full, the lien must be released in the manner provided for property tax liens.

(D) The equipment included in the C‑PACE lien may be removed if it becomes obsolete or damaged; provided, however, that if the equipment is removed for obsolescence or damage, the assessment for the equipment and any interest, fees, and penalties shall remain a lien against the qualifying real property until paid in full.

(E) To the extent that assessments are not paid when due, the delinquency may be enforced by the governing authority or its assignee in the same manner as property taxes on the qualifying real property.

(F) The C‑PACE lien will not accelerate or become extinguished in the event of a delinquency, default, foreclosure or bankruptcy of the owner(s) of the qualifying real property.

(G) In the event that a payment on the C‑PACE lien is in default for a period exceeding thirty days from the due date of such payment, the governing authority or its designated agent or assignee must send written notice of such default to each mortgagee of record.

(H) In the event that a mortgagee forecloses its mortgage on the qualifying real property, the mortgagee must serve all procedural documents of the foreclosure on the governing authority or its designated agent or assignee as though it were a party to the action.

(I) The C‑PACE lien shall survive any judgment of foreclosure awarded to a mortgagee.

(J) The C-PACE lien shall be disclosed to any subsequent purchaser prior to closing. /

Amend the bill further, as and if amended, page 7, by striking lines 18-43, and page 8, by striking lines 1-14 and inserting:

/ (B) The district may sell or assign, for consideration, any and all liens received from the participating governing body. The consideration received by the district shall be negotiated between the district and the assignee. The assignee or assignees of such liens shall have and possess the same powers and rights at law or in equity as the district and the participating county and its tax collector would have had if the lien had not been assigned with regard to the precedence and priority of such lien, the accrual of interest and the fees and expenses of collection.

(C) Costs and reasonable attorney fees incurred by the assignee either as a result of a foreclosure action, or other legal proceeding brought pursuant to this section and directly related to the proceeding, shall be levied against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.

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

(1) with revenue bonds issued by the participating governing body or any other qualified issuer of revenue bonds, provided that such revenue bonds shall be secured solely by the assessments collected from properties whose owners have voluntarily entered into assessment contracts and have undertaken clean energy improvement projects, and any other funds lawfully pledged as security.

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

(3) with any other legally available funds.

(B) The credit and taxing power of the State will not be pledged for the debt evidenced by the bonds. The bonds will be payable solely from the revenues received from the special assessments on the owner’s qualifying real property under this chapter. /

Amend the bill further, as and if amended, by striking Section 6‑39‑130 in its entirety.

Renumber sections to conform.

Amend title to conform.

THOMAS C. ALEXANDER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

Due to the permissive nature of this bill, the expenditure and revenue impact on local governments is undetermined. This fiscal impact statement has been updated to revise our analysis of the proposed finance methods for the clean energy improvements.

**Explanation of Fiscal Impact**

**Local Expenditure and Local Revenue**

This bill adds Chapter 39 to Title 6, which allows a governing body to establish a district by ordinance for the purpose of promoting, encouraging, and facilitating clean energy improvements within its geographic boundaries. The clean energy improvements must be for use at a qualifying real property, which is defined as a commercial property including industrial, agricultural, and nonprofit owned buildings and multifamily dwellings consisting of five or more units. The governing body has the authority to impose an assessment on the qualifying real property whose owners have voluntarily executed a written agreement consenting to the inclusion of their property within the district and a written financing agreement for the purpose of financing the clean energy improvements. The assessment must include, but not be limited to, an amount up to one hundred percent of a project’s unpaid costs. The assessments must be levied, collected, and administered in the same manner as the property taxes are levied, collected, and administered by the participating governing body on real property. The clean energy improvements may be financed with revenue bonds, with funds provided directly by a bank or other financial institution or lender, or with any other legally available funds. The revenue bonds can be issued by the participating governing body or any other qualified issuer of municipal revenue bonds, provided that such revenue bonds must be secured solely by the assessments collected from properties whose owners have voluntarily entered into assessment contracts.

Due to the permissive nature of this bill, the expenditure and revenue impact on local governments will depend upon the number of districts established by ordinance and the number of property owners who decide to volunteer their properties for the clean energy improvements. The expenditure and revenue impact on local governments is therefore undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND TITLE 6, RELATING TO PROVISIONS APPLICABLE TO SPECIAL PURPOSE DISTRICTS AND OTHER POLITICAL SUBDIVISIONS; TO CREATE THE SOUTH CAROLINA COMMERCIAL‑PROPERTY ASSESSED CLEAN ENERGY ACT 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 COMMERCIAL‑PROPERTY ASSESSED CLEAN ENERGY 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

Section 6‑39‑10. This chapter shall be known as the ‘South Carolina Commercial‑Property Assessed Clean Energy Act’.

Section 6‑39‑20. (A) For the 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, including daylighting; energy recovery systems; combined heat and power systems; or any other utility cost‑savings measure approved by the governing body.

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

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

(9) ‘Program’ or ‘C‑PACE program’ means a program established by a governing body to administer commercial‑property assessed clean energy financing within a district. Such program may be administered by the governing body or by a third party paid for such program administration services.

(10) ‘Qualifying real property’ means a commercial property including industrial, agricultural, non‑profit owned buildings, and multifamily dwellings consisting of five or more units that the governing body has determined, after review, can be benefited by the installation of clean energy improvements. Qualifying real property does not include non‑profit owned single‑family residential property. Multifamily dwellings with five or more units must be considered ‘nonresidential’ customer generators to ensure these commercial properties adhere to the capacity restrictions of Section 58‑40‑10(C).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) An agreement entered following completion of an energy audit shall specify the measures to be completed and the contractor responsible for completion of the measures. The choice of a contractor to perform the work must be made by the property owner. Upon completion of the work, it must be inspected by an energy auditor certified by the Building Performance Institute or similar organization. Any work that is determined to have been done improperly or to be inappropriately sized for the intended use must be remedied by the responsible contractor.

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

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

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

(6) provide a methodology for the imposition, apportionment, adjustment, and termination of the assessment under Section 6‑39‑60;

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

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

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

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

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

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

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

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

(B) The written agreement between members of a district and the property owner shall establish the terms and conditions of the operation of the district within the limitations provided in this chapter.

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

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

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

(1) A written agreement consenting to:

(a) the inclusion of their property within the district; and

(b) undertake clean energy improvements.

(2) A written financing agreement for the purpose of financing those clean energy improvements subject to Section 6‑39‑90.

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

(1) costs of the equipment and technologies for clean energy improvements;

(2) interest expenses;

(3) architectural and engineering costs; and

(4) any other costs associated with the administration of the district.

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

(B) The status of the C‑PACE lien is based on the date the lien is filed at the courthouse. The C‑PACE lien shall be junior to a mortgage.

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

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

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

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

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

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

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

(C) Costs and reasonable attorneys’ fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to this section and directly related to the proceeding shall be levied in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.

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

(1) with revenue bonds issued by the participating governing body or any other qualified issuer of municipal revenue bonds, provided that such revenue bonds shall be secured solely by the assessments collected from properties whose owners have voluntarily entered into assessment contracts and have undertaken clean energy improvement projects, and any other funds lawfully pledged as security;

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

(3) with any other legally available funds.

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

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

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

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

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

(2) an electric appliance used for home heating is being replaced by an appliance that operates primarily on electricity but which has the capability of also operating on a secondary fuel source.

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

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

Section 6‑39‑140. Nothing contained in this chapter shall be construed to conflict with Article 23 of Chapter 27, Chapters 37, 39, and 40 of Title 58.”

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

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