

2021 Regular Session

HOUSE BILL NO. 619

BY REPRESENTATIVE HILFERTY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROPERTY: Authorizes parishes governing authorities to create commercial property assessed clean energy resilience programs

1 AN ACT

2 To enact Chapter 10-E of Title 33 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 33:4550.1 through 4550.5, relative to powers of parish governing  
4 authorities; to authorize the governing authorities to create commercial property  
5 assessed clean energy and resilience programs within their respective jurisdictions;  
6 to provide relative to the requirements of any such program; to provide definitions;  
7 to provide limitations; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 10-E of Title 33 of the Louisiana Revised Statutes of 1950,  
10 comprised of R.S. 33:4550.1 through 4550.5, is hereby enacted to read as follows:

11 CHAPTER 10-E. COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY AND  
12 RESILIENCE PROGRAM

13 §4550.1. Commercial Property Assessed Clean Energy Resilience Program;  
14 legislative findings

15 The legislature hereby finds and declares all of the following:

- 16 (1) Authorizing parish governing authorities throughout the state of  
17 Louisiana to establish commercial property assessed clean energy resilient loan  
18 programs within federally designated opportunity zones located in their respective  
19 jurisdictions provides the owners of qualified properties within those jurisdictions

1 with an opportunity to obtain low cost, long-term financing for eligible  
2 improvements.

3 (2) The use of commercial property assessed clean energy resiliency  
4 programs within local jurisdictions across the state will increase economic  
5 development, lower insurance costs, and lower disaster and emergency response and  
6 aid costs to local governments. These programs will also decrease energy and water  
7 costs and encourage energy and water sustainability.

8 §4550.2. Definitions

9 The following terms have the meanings ascribed to them unless the context  
10 clearly indicates otherwise:

11 (1) "Alternative energy system" means energy generated from alternative  
12 energy sources such as district energy, fuel cells, demand side management  
13 (including energy efficiency technologies, load management or demand response  
14 technologies, and industrial by-product technologies), carbon sequestration,  
15 microgrids, distributed generation systems such as solar photovoltaic and solar  
16 thermal.

17 (2) "Capital provider" means any private entity or its designee, successor, or  
18 assigns, that make or fund loans under this Chapter.

19 (3) "Eligible improvements" mean permanent improvements affixed to a  
20 qualified property and intended to accomplish the following:

21 (a) Increase resilience with a project that increases the capacity of a structure  
22 or infrastructure to withstand natural or manmade disasters or severe weather  
23 impacts including but not limited to flood mitigation or the mitigation of the impacts  
24 of flooding; natural or nature-based features; storm water management; fire and wind  
25 resistance, energy storage, and micro grids.

26 (b) Environmental remediation with a project that promotes indoor air and  
27 water quality; asbestos remediation; lead paint removal; and mold remediation.

1           (c) Decrease water consumption or demand, promote efficient use of water,  
2           address safe drinking water or improve wastewater quality through the use of  
3           efficiency technologies, products, or activities.

4           (d) Decrease energy consumption or demand through the use of efficiency  
5           technologies, products, or activities that reduce or support the reduction of energy  
6           consumption, allow for the reduction in demand, or support the production of  
7           alternative energy, including but not limited to a product, device, or interacting group  
8           of products or devices on the property owner's side of the meter that generates  
9           electricity, provides thermal energy, or regulates temperature.

10           (4) "Federally designated opportunity zones" mean economically distressed  
11           communities, defined by individual census tract, nominated by America's governors,  
12           and certified by the United States secretary of the treasury via his delegation of that  
13           authority to the Internal Revenue Service.

14           (5) "Financing agreement" means the contract under which a property owner  
15           agrees to repay a capital provider for the loan including but not limited to details of  
16           any finance charges, fees, debt servicing, escrow requirements, accrual of interest,  
17           and penalties and any terms relating to treatment of pre-payment and partial payment  
18           of the loan.

19           (6) "Lender" means any and all prior lienholders that have a secured lien  
20           against the qualified property.

21           (7) "Lender consent and subordination agreement" means a recorded  
22           agreement whereby each prior lienholder agrees to subordinate a lender's mortgage  
23           lien to the Resilient C-PACE lien, not to exceed the aggregate amount of due and  
24           unpaid loan installments.

25           (8) "Loan" means a loan made under the Resilient C-PACE program.

26           (9) "Program" means a commercial property assessed clean energy resiliency  
27           program established pursuant to the provisions of this Chapter.

28           (10) "Program administrator" means the party designated by a respective  
29           parish. The parish may be the administrator or may designate a third-party provided

1 that the administration procedures of the third-party meet the requirements of this  
2 Chapter.

3 (11) "Program guide" means a comprehensive document that illustrates the  
4 applicable region for a program and establishes any appropriate guidelines,  
5 specifications, underwritten and approval criteria, and any standard application forms  
6 consistent with the administration of a program and not detailed in this Chapter.

7 (12) "Property owner" means the title owner or a tenant under a long term  
8 written lease agreement with the title owner of a qualified property.

9 (13) "Qualified property or properties" mean all property located within an  
10 federally designated opportunity zone within the state with all buildings located or  
11 to be located thereon, whether vacant or occupied, whether improved or unimproved,  
12 and regardless of whether such property is subject to taxation by the parish, other  
13 than residential property containing fewer than five dwelling units. Qualified  
14 property may be owned by any type of business, corporation, individual, or nonprofit  
15 organization permitted by state law. Qualified properties shall be eligible to  
16 participate in the Resilient C-PACE program.

17 (14) "Resilient C-PACE" means the commercial property assessed clean  
18 energy resiliency program created pursuant to this Chapter.

19 (15) "Resilient C-PACE lien" means a voluntary lien levied against qualified  
20 property as security for the loan.

21 §4550.3. Establishment of program

22 A. The governing authority of any parish may establish, by ordinance, a  
23 commercial energy efficiency and resilient loan program. The program shall be  
24 named "Resilient C-PACE". Resilient C-PACE is a loan program created for the  
25 purpose of encouraging, accommodating, and enabling financing of eligible  
26 improvements made by capital providers to property owners. A parish may contract  
27 with a third-party program administrator to manage the program on its behalf.

28 B. Any ordinance enacted pursuant to this Section to establish a program  
29 shall designate areas within the boundaries of the parish in which Resilient C-PACE

1 activities are eligible. The ordinance shall also authorize the parish to enforce the  
2 Resilient C-PACE lien in the same manner as other parish enforced liens.

3 §4550.4. Financing for eligible improvements

4 A. The owner of a qualified property within a federally designated  
5 opportunity zone may request a loan from a capital provider to cover all direct and  
6 indirect costs related to the installation, modification, or new construction of eligible  
7 improvements to be affixed to the qualified property. The program administrator  
8 shall accept or reject a loan request according to criteria established by the program  
9 administrator.

10 B. The term for repayment of a loan shall not exceed the weighted average  
11 usefulness of eligible improvements or thirty years, whichever is less.

12 C. The total loan-to-value ratio for all loans secured by the qualified property  
13 shall not exceed one hundred percent. The calculation of equivalent value used to  
14 determine the maximum amount of financing and available for a particular property  
15 may take into account the reasonable expected stabilized value of the property with  
16 the proposed eligible improvements installed.

17 D. If there is a nonpayment or default, then there shall be no acceleration of  
18 the loan, and a loan delinquency shall exist only for liens not paid when due.

19 E. In order to qualify for financing, the property owner shall be current on  
20 all outstanding mortgage loans encumbering the qualified property upon which the  
21 eligible improvements are proposed to be installed or constructed.

22 F. An appropriate evaluation, such as energy analysis or renewable energy  
23 system feasibility study, shall be conducted on the qualified property by a qualified  
24 professional to confirm that the improvements meet the Resilient C-PACE  
25 requirements reviewed by the program administrator prior to approval of the loan.

26 G. If eligible improvements are proposed to be installed on qualified  
27 properties, the program administrator shall determine that the eligible improvements  
28 are installed and all work is completed satisfactorily before loan funds are distributed  
29 to the property owner. In the alternative, funds for eligible improvements may be

1 disbursed based on multiple stages of construction completion, the disbursement of  
2 which is contained in financing agreements.

3 H. All eligible improvements financed through the program shall be  
4 performed by duly qualified contractors, subcontractors, or tradesmen pursuant to  
5 program rules that are developed by the program administrator.

6 I. Before a capital provider may enter into a financing agreement to provide  
7 financing to an owner of a qualified property for eligible improvements, the capital  
8 provider must receive written consent from any holder of a lien, mortgage, or  
9 security interest in the qualified property that the property may participate in  
10 Resilient C-PACE and that the Resilient C-PACE lien shall take priority over all  
11 other liens, except for ad valorem tax liens. This consent shall take the form and  
12 substance of a written lender consent and subordination agreement that is acceptable  
13 to each prior lienholder in its sole discretion, is executed by the holder of each  
14 mortgage lien on the qualified property, and is recorded with the Resilient C-PACE  
15 lien in the land records where the qualified property is located.

16 J. The written lender consent and subordination agreement shall evidence  
17 that:

18 (1) The lender acknowledges, approves and consents to the loan and the  
19 recordation of the Resilient C-PACE lien in the land records against the qualified  
20 property; subordinates lender's mortgage lien to the Resilient C-PACE lien, not to  
21 exceed the aggregate amount of due and unpaid loan installments, and  
22 acknowledges, approves, and consents to the recordation of this subordination in the  
23 land records against the qualified property.

24 (2) The property owner is current on payments on loans secured by a  
25 mortgage lien on the qualified property and on property tax payments; the property  
26 owner is not insolvent or in bankruptcy proceedings; the title of the benefitted  
27 qualified property is not in dispute and is submitted to the locality prior to recording  
28 of the Resilient C-PACE lien.

1           (3) The loan shall not constitute a default or an event of default under senior  
2           loan documents.

3           (4) The subordination shall not prohibit lender from pursuing any and all  
4           rights and remedies available by law or in equity to collect from the property owner  
5           securing a loan all amounts due to it under senior loan documents; however, such  
6           enforcement shall be subject to the payment of the due and unpaid loan installments  
7           as set forth in the amortization schedule of the recorded Resilient C-PACE lien  
8           documentation together with real property taxes due in connection with the  
9           ownership of the qualified property. In addition, the lender shall have the right to  
10          cure any nonpayment by the property owner securing a loan of real property taxes  
11          and assessments, including the Resilient C- PACE loan, to the same extent as lender  
12          has a right to cure nonpayment of real property taxes before any lien is foreclosed  
13          by the parish.

14          K. The lender consent and subordination agreement shall further contain all  
15          lender requirements pursuant to subordination of the due and unpaid loan  
16          installments including at a minimum the right to require an escrow account under  
17          lender's control that contains future unpaid loan installments, the amount of which  
18          shall be determined at the sole and full discretion of the lender.

19          L. An eligible improvement may be made and financed by a lessee under a  
20          lease only if:

21                 (1) The remaining lease term equals or exceeds the term of the loan.

22                 (2) The lessee is treated as the owner of the eligible improvements.

23                 (3) The lessee shall be legally and primarily responsible for the repayment  
24          of the loan.

25          M. The program administrator may approve a loan application for financing  
26          or refinancing the total costs of eligible improvements on a qualified property filed  
27          within thirty-six months of the issuance of a certificate of occupancy or equivalent  
28          compliance document.

29          §4550.5. Repayment of loans

1           A. The loan amount, including capitalized interest and administrative fees,  
2           shall be assessed against the qualified property upon which the eligible  
3           improvements are affixed and shall be collected by the program administrator, third-  
4           party servicer, or capital provider.

5           B. In order to secure repayment of a loan, upon entering into a loan with a  
6           property owner, the program administrator or capital provider shall file a statement  
7           of Resilient C-PACE lien with the recorder of mortgages for the parish in which the  
8           qualified property is located. The Resilient C-PACE lien or privilege shall be for the  
9           full amount of the loan and shall take effect against third persons upon filing the  
10           statement of Resilient C-PACE lien with the appropriate recorder of mortgages for  
11           the parish where the qualified property is located. The Resilient C-PACE lien shall  
12           rank equivalent to that of ad valorem taxes or local assessments and liens and  
13           privileges as provided in R.S. 9:4821(A)(l). The statement of the voluntary Resilient  
14           C-PACE lien shall contain the following:

15                   (1) Identity of the Resilient C-PACE lienholder, including a contact name,  
16                   address, and phone number.

17                   (2) Identity of property owner including property owner's full name,  
18                   domicile, and permanent mailing address, and last four digits of the property owner's  
19                   social security number or tax-payer identification number, whichever is applicable.

20                   (3) Legal description of the qualified property encumbered by the Resilient  
21                   C-PACE lien.

22                   (4) Date that the Resilient C-PACE lien is created, which means the date that  
23                   the loan documents are signed.

24                   (5) Dollar amount of the loan for which the Resilient C-PACE lien is  
25                   created.

26           C. Upon failure of the property owner to pay the current year's Resilient  
27           C-PACE payment, the parish shall have the right to enforce the Resilient C-PACE  
28           lien and privilege to recover and collect the current year's payment along with  
29           payments remaining delinquent from previous years. The Resilient C-PACE lien and



1 privilege shall have the same ranking as ad valorem tax liens as provided in R S.  
 2 9:4821(A)(1), and may be enforced and collected by ordinary civil proceeding in  
 3 accordance with La. C.C.P. Article 851 et seq. or by executory process if the loan  
 4 documentation contains a confession of judgment, or by any other applicable state  
 5 law to enforce and collect the amount due as a property tax lien assessed against the  
 6 qualified property in any manner fixed for collection of taxes subject to the same  
 7 civil penalties for delinquencies, including accrued interest, together with attorneys'  
 8 fees and costs incurred in notification to the property owner and the enforcement and  
 9 collection of the amounts owed. The Resilient C-PACE lien shall not be  
 10 extinguished by the enforcement or foreclosure of the qualified property.

11 D. Loans shall be repaid by the property owner through loan payments made  
 12 in the amounts and at such times as set forth in the loan documents and the Resilient  
 13 C-PACE program guide. The capital provider shall be responsible, subject to and  
 14 in accordance with the terms of the loan documents, for the servicing of the loans  
 15 and the collection of loan payments.

16 E. Once the loan is paid in full, then the program administrator shall provide  
 17 written evidence of cancellation and release of the Resilient C-PACE lien and shall  
 18 record it in the public mortgage records for the parish where the qualified property  
 19 is located.

20 F. Prepayment of the remaining balance of a loan is only remitted in  
 21 accordance with the loan documents.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 619 Original

2021 Regular Session

Hilferty

**Abstract:** Authorizes parish governing authorities to create commercial property assessed clean energy resilient programs in federally designated opportunity zones.

Proposed law authorizes parish governing authorities to establish, by ordinance, commercial property assessed clean energy resilient programs (Resilient C-PACE) in federally designated opportunity zones located within in their respective jurisdictions. Provides that Resilient C-PACE is a loan program created to encourage, accommodate, and enable

financing of eligible improvements made by capital providers to property owners. Requires that the ordinance designate the areas within the parish in which Resilient C-PACE activities are eligible. Authorizes the parish to contract with a third-party program administrator to manage the program.

Proposed law provides that the owner of a qualified property may request a loan from a capital provider to cover all direct and indirect costs related to the installation, modification, or new construction of eligible improvements to be affixed to the qualified property. Requires the program administrator to accept or reject a loan request according to criteria established by the program administrator. Provides that the term for repayment of a loan cannot exceed the weighted average usefulness of eligible improvements or 30 years, whichever is less.

Proposed law requires an owner to be current on all outstanding mortgage loans encumbering the qualified property in order to qualify for financing. Requires an appropriate evaluation, such as energy analysis or renewable energy system feasibility study to be conducted on the qualified property prior to the loan. Prohibits acceleration of a loan in the case of default and provides that a loan delinquency shall exist only for liens not paid when due.

Proposed law requires a capital provider, prior to entering a financing agreement, to receive written consent from any holder of a lien, mortgage, or security interest in the qualified property that the property may participate in Resilient C-PACE and the Resilient C-PACE lien takes priority over all other liens, except for ad valorem tax liens. Provides that the consent takes the form and substance of a written lender consent and subordination agreement. Provides further with respect to the content requirements of the agreement.

Proposed law requires that the loan amount, including capitalized interest and administrative fees, be assessed against the qualified property upon which the eligible improvements are affixed and be collected by the program administrator, third-party servicer, or capital provider. Requires the capital provider, in order to secure repayment of a loan, to file a statement of Resilient C-PACE lien with the recorder of mortgages for the parish in which the qualified property is located upon entering into a loan with a property owner. Provides further with respect to content requirements of the statement. Proposed law requires that the ordinance that establishes the district authorize the parish to enforce the Resilient C-PACE lien in the same manner as other parish enforced liens.

Proposed law provides that upon failure of the property owner to pay the current year's Resilient C-PACE payment, the parish can enforce the Resilient C-PACE lien and privilege to recover and collect the current year's payment along with payments remaining delinquent from previous years. Provides that the Resilient C-PACE lien and privilege has the same ranking as ad valorem tax liens as provided in present law, and may be enforced and collected and authorized by present law.

Proposed law requires that loans be repaid by the property owner through loan payments made in the amounts and at such times as set forth in the loan documents and the Resilient C-PACE program guide. Provides that the capital provider is responsible for the servicing of the loans and the collection of loan payments. Requires the program administrator to provide written evidence of cancellation and release of the Resilient C-PACE lien and to record it in the public mortgage records for the parish once the loan is paid in full.

(Adds R.S. 33:4550.1-4550.5)