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SENATE BILL NO. 801

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns on February 13, 2015)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact § 15.2-958.3 of the Code of Virginia, relating to the financing of clean energy programs.

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-958.3 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-958.3. Financing clean energy programs.

A. Any locality may, by ordinance, authorize contracts to provide loans for the initial acquisition and installation of clean energy improvements with free and willing property owners of both existing properties and new construction. Such an ordinance shall include but not be limited to the following:

1. The kinds of ~~distributed generation~~ renewable energy ~~sources or energy~~ *production and distribution facilities, energy usage* efficiency improvements, *or water usage efficiency improvements* for which loans may be offered;

2. The proposed arrangement for such loan program, including (i) a statement concerning the source of funding that will be used to pay for work performed pursuant to the contracts; (ii) the interest rate and time period during which contracting property owners would repay the loan; and (iii) the method of apportioning all or any portion of the costs incidental to financing, administration, and collection of the arrangement among the consenting property owners and the locality;

3. A minimum and maximum aggregate dollar amount which may be financed;

4. A method for setting requests from property owners for financing in priority order in the event that requests appear likely to exceed the authorization amount of the loan program. Priority shall be given to those requests from property owners who meet established income or assessed property value eligibility requirements;

5. Identification of a local official authorized to enter into contracts on behalf of the locality. *A locality may contract with a third party for professional services to administer such loan program;*

6. Identification of any fee that the locality intends to impose on the property owner requesting to participate in the loan program to offset the cost of administering the loan program. The fee may be assessed as (i) a program application fee paid by the property owner requesting to participate in the program, (ii) a component of the interest rate on the assessment in the written contract between the locality and the property owner, or (iii) a combination of (i) and (ii); and

~~6.~~ *7.* A draft contract specifying the terms and conditions proposed by the locality.

B. The locality may combine the loan payments required by the contracts with billings for water or sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish the order in which loan payments will be applied to the different charges. The locality may not combine its billings for loan payments required by a contract authorized pursuant to this section with billings of another locality or political subdivision, including an authority operating pursuant to Chapter 51 (§ 15.2-5100 et seq.), unless such locality or political subdivision has given its consent by duly adopted resolution or ordinance.

C. The locality shall offer private lending institutions the opportunity to participate in local loan programs established pursuant to this section.

D. In order to secure the loan authorized pursuant to this section, the locality shall be authorized to place a *voluntary special assessment* lien equal in value to the loan against any property where such clean energy systems are being installed. The locality may bundle or package said loans for transfer to private lenders in such a manner that would allow the *voluntary special assessment* liens to remain in full force to secure the loans.

E. *A voluntary special assessment lien on real property other than a residential dwelling with fewer than five dwelling units or a condominium project as defined in § 55-79.2:*

1. Shall have the same priority status as a property tax lien against real property, except that such voluntary special assessment lien shall have priority over any previously recorded mortgage or deed of trust lien only if (i) a written subordination agreement, in a form and substance acceptable to each prior lienholder in its sole and exclusive discretion, is executed by the holder of each mortgage or deed of trust lien on the property and recorded with the special assessment lien in the land records where the property is located, and (ii) evidence that the property owner is current on payments on loans secured by a mortgage or deed of trust lien on the property and on property tax payments, that the property owner is not insolvent or in bankruptcy proceedings, and that the title of the benefitted property is not in dispute is submitted to the locality prior to recording of the special assessment lien;

2. Shall run with the land, and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien;

3. May be enforceable by the local government in the same manner that a property tax lien against real property may be enforced by the local government. A local government shall be entitled to recover costs and expenses, including attorney fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax; and

4. May incur interest and penalties for delinquent installments of the assessment in the same manner as delinquent property taxes.

F. Prior to the enactment of an ordinance pursuant to this section, a public hearing shall be held at which interested persons may object to or inquire about the proposed loan program or any of its particulars. The public hearing shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.

2. That the Department of Mines, Minerals and Energy (DMME) shall develop uniform statewide financial underwriting guidelines for loans made under § 15.2-958.3. In developing the guidelines, DMME shall incorporate input from representatives of the Virginia Bankers Association, the Virginia Energy Efficiency Council, the Virginia Association of Realtors, the Virginia Municipal League, the Virginia Association of Counties, and the Virginia Association for Commercial Real Estate. The guidelines shall require an evaluation of each of the following criteria: the loan to value ratio, the voluntary special assessment to assessed value ratio, the savings to investment ratio, the requirement for energy assessments, and any provision addressing the disclosure of voluntary special assessments to a subsequent owner of the property. DMME shall finalize the uniform financial underwriting guidelines no later than December 1, 2015.