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HOUSE BILL NO. 1859

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Counties Cities and Towns
on January 15, 2021)

(Patron Prior to Substitute—Delegate Guy)

A BILL to amend and reenact § 15.2-958.3 of the Code of Virginia, relating to financing clean energy and other programs; when owner costs incurred.

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, resiliency, and stormwater management programs.

A. Any locality may, by ordinance, authorize contracts to provide loans for the initial acquisition and installation of clean energy, resiliency, or stormwater management improvements with free and willing property owners of both existing properties and new construction, *provided, however, that such loans may not be used to improve a residential dwelling with fewer than five dwelling units or a residential condominium as defined in § 55.1-2000.* Such an ordinance shall include ~~but not be limited to~~ the following:

1. The kinds of renewable energy production and distribution facilities, energy usage efficiency improvements, resiliency improvements, water usage efficiency improvements, or stormwater management improvements for which loans may be offered. Resiliency improvements may include mitigation of flooding or the impacts of flooding or stormwater management improvements with a preference for natural or nature-based features and living shorelines as defined in § 28.2-104.1;

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. (i) A minimum ~~and maximum~~ aggregate dollar amount that may be financed with respect to a property ~~and~~, (ii) if a locality or other public body is originating the ~~loan~~ *loans*, a maximum aggregate dollar amount that may be financed with respect to loans originated by the locality or other public body, *and (iii) provisions that the loan program may approve a loan application submitted within two years of the locality's issuance of a certificate of occupancy or other evidence that the clean energy, resiliency, or stormwater management improvements comply substantially with the plans and specifications previously approved by the locality and that such loan may refinance or reimburse the property owner for the total costs of such improvements;*

4. In the case of a loan program described in clause (ii) of subdivision 3, 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 clauses (i) and (ii); and~~

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, resiliency improvements, or stormwater management improvements are being installed. The locality may bundle or package said loans for transfer to private lenders in such a manner

60 that would allow the voluntary special assessment liens to remain in full force to secure the loans. *The*
61 *placement of a voluntary special assessment lien shall not require a new assessment on the value of the*
62 *real property that is being improved under the loan program.*

63 E. A voluntary special assessment lien on real property ~~other than a residential dwelling with fewer~~
64 ~~than five dwelling units or a condominium project as defined in § 55.1-2000:~~

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

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

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

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

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

86 G. The Department of Mines, Minerals and Energy shall ~~have the authority to~~ serve as a statewide
87 sponsor for a clean energy financing program that meets the requirements of this section. The
88 Department of Mines, Minerals and Energy shall engage a private entity through a competitive selection
89 process to develop and administer the program.