

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 402

An Act to amend and reenact § 15.2-958.3 of the Code of Virginia, relating to general powers of local governments; additional powers; Commercial Property Assessed Clean Energy (C-PACE) financing programs.

[H 1325]

Approved April 11, 2022

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. Commercial Property Assessed Clean Energy (C-PACE) financing programs.

A. As used in this section:

"Eligible improvements" means any of the following improvements made to eligible properties:

1. Energy efficiency improvements;
2. Water efficiency and safe drinking water improvements;
3. Renewable energy improvements;
4. Resiliency improvements;
5. Stormwater management improvements;
6. Environmental remediation improvements; and
7. Electric vehicle infrastructure improvements.

A program administrator may include in its C-PACE loan program guide or other administrative documentation definitions, interpretations, and examples of these categories of eligible improvements.

"Eligible properties" means all assessable commercial real estate located within the Commonwealth, with all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the locality, other than a residential dwelling with fewer than five dwelling units or a condominium as defined in § 55.1-2000 used for residential purposes. Common areas of real estate owned by a cooperative or a property owners' association described in Subtitle IV (§ 55.1-1800 et seq.) of Title 55.1 that have a separate real property tax identification number are eligible properties. Eligible properties shall be eligible to participate in the C-PACE loan program.

"Program administrator" means a third party that is contracted for professional services to administer a C-PACE loan program.

"Resiliency improvement" means an improvement that increases the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

1. Flood mitigation or the mitigation of the impacts of flooding;
2. Inundation adaptation;
3. Natural or nature-based features and living shorelines, as defined in § 28.2-104.1;
4. Enhancement of fire or wind resistance;
5. Microgrids;
6. Energy storage; and
7. Enhancement of the resilience capacity of a natural system, structure, or infrastructure.

B. Any locality may, by ordinance, authorize contracts to provide C-PACE loans (*loans*) for the initial acquisition and, installation, and refinancing of clean energy, resiliency, or stormwater management improvements with eligible improvements located on eligible properties by 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 such eligible properties. The ordinance may refer to the mode of financing as Commercial Property Assessed Clean Energy (C-PACE) financing and shall include but not be limited to the following:

1. The kinds of renewable energy production and distribution facilities, energy usage efficiency eligible 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 that qualify for loans;

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

financing, administration, and collection of the arrangement C-PACE loan among the consenting property owners and the locality the parties to the C-PACE transaction;

3. (i) A minimum dollar amount that may be financed with respect to a *an eligible* property; (ii) if a locality or other public body is originating the 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~~ *eligible* 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 *eligible* improvements;

4. In the case of a loan program described in clause (ii) of subdivision 3, a method for setting requests from ~~property~~ owners of *eligible properties* 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 of *eligible properties* 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~~ *program administrator* 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 a program fee paid by the property owner requesting to participate in the program; and

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

B. C. 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. *The locality may, either by ordinance or its program guide, delegate the billing; collection, including enforcement; and remittance of C-PACE loan payments to a third party.*

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

D. E. In order to secure the loan authorized pursuant to this section, the locality shall 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~~ *eligible* improvements 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. The placement of a voluntary special assessment lien shall not require a new assessment on the value of the real property that is being improved under the loan program.

E. F. A voluntary special assessment lien *imposed* on real property *under this section*:

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 benefited 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~~ *enforced* by the local government in the same manner that a property tax lien against real property ~~may be~~ is 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. G. 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.

G. H. The Department of Energy shall serve as a statewide sponsor for a ~~clean energy financing~~ *loan* program that meets the requirements of this section. The Department of Energy shall engage a private entity *program administrator* through a competitive selection process to develop and administer the

statewide loan program. A locality, in its adoption or amendment of its C-PACE ordinance described in subsection B, may opt into the statewide C-PACE loan program sponsored by the Department of Energy, and such action shall not require the locality to undertake any competitive procurement process.