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HOUSE BILL NO. 1325

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Counties, Cities and Towns
on February 11, 2022)

(Patron Prior to Substitute—Delegate Reid)

A BILL 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.

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

60 the C-PACE loan; and (iii) the method of apportioning all or any portion of the costs incidental to
61 financing, administration, and collection of the ~~arrangement~~ C-PACE loan among the ~~consenting~~
62 ~~property owners and the locality~~ the parties to the C-PACE transaction;

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

71 4. In the case of a loan program described in clause (ii) of subdivision 3, a method for setting
72 requests from ~~property~~ owners of *eligible properties* for financing in priority order in the event that
73 requests appear likely to exceed the authorization amount of the loan program. Priority shall be given to
74 those requests from ~~property~~ owners of *eligible properties* who meet established income or assessed
75 property value eligibility requirements;

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

79 6. Identification of any fee that the locality intends to impose on the property owner requesting to
80 participate in the loan program to offset the cost of administering the loan program. The fee may be
81 assessed as a program fee paid by the property owner requesting to participate in the program; and

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

83 ~~B. C.~~ The locality may combine the loan payments required by the contracts with billings for water
84 or sewer charges, real property tax assessments, or other billings; in such cases, the locality may
85 establish the order in which loan payments will be applied to the different charges. The locality may not
86 combine its billings for loan payments required by a contract authorized pursuant to this section with
87 billings of another locality or political subdivision, including an authority operating pursuant to Chapter
88 51 (§ 15.2-5100 et seq.), unless such locality or political subdivision has given its consent by duly
89 adopted resolution or ordinance. *The locality may, either by ordinance or its program guide, delegate*
90 *the billing; collection, including enforcement; and remittance of C-PACE loan payments to a third party.*

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

93 ~~D. E.~~ In order to secure the loan authorized pursuant to this section, the locality shall place a
94 voluntary special assessment lien equal in value to the loan against any property where such ~~clean~~
95 ~~energy systems, resiliency improvements, or stormwater management~~ *eligible* improvements are being
96 installed. The locality may bundle or package said loans for transfer to private lenders in such a manner
97 that would allow the voluntary special assessment liens to remain in full force to secure the loans. The
98 placement of a voluntary special assessment lien shall not require a new assessment on the value of the
99 real property that is being improved under the loan program.

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

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

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

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

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

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

122 G. H. The Department of Energy shall serve as a statewide sponsor for a ~~clean energy financing loan~~
123 program that meets the requirements of this section. The Department of Energy shall engage a private
124 ~~entity~~ *program administrator* through a competitive selection process to develop ~~and administer~~ the
125 *statewide loan program. A locality, in its adoption or amendment of its C-PACE ordinance described in*
126 *subsection B, may opt into the statewide C-PACE loan program sponsored by the Department of*
127 *Energy, and such action shall not require the locality to undertake any competitive procurement process.*