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HOUSE BILL NO. 1325

Offered January 21, 2022

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.

 Patron—Reid

 Committee Referral Pending

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 affixed 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; or
7. Electric vehicle infrastructure 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 residential condominium as defined in § 55.1-2000.

"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; or
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

INTRODUCED

HB1325

59 financed with respect to loans originated by the locality or other public body, and (iii) provisions that
60 the loan program may approve a loan application submitted within two years of the locality's issuance of
61 a certificate of occupancy or other evidence that ~~the clean energy, resiliency, or stormwater management~~
62 *eligible* improvements comply substantially with the plans and specifications previously approved by the
63 locality and that such loan may refinance or reimburse the property owner for the total costs of such
64 improvements;

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

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

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

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

76 ~~B. C.~~ The locality may combine the loan payments required by the contracts with billings for water
77 or sewer charges, real property tax assessments, or other billings; in such cases, the locality may
78 establish the order in which loan payments will be applied to the different charges. The locality may not
79 combine its billings for loan payments required by a contract authorized pursuant to this section with
80 billings of another locality or political subdivision, including an authority operating pursuant to Chapter
81 51 (§ 15.2-5100 et seq.), unless such locality or political subdivision has given its consent by duly
82 adopted resolution or ordinance. *The locality may delegate the billing, collection, and remittance of*
83 *C-PACE loan payments to a third party.*

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

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

93 ~~E. F.~~ A voluntary special assessment lien on real property:

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

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

105 3. ~~May~~ *Shall* be ~~enforceable~~ *enforced* by the local government in the same manner that a property
106 tax lien against real property ~~may be~~ *is* enforced by the local government. A local government shall be
107 entitled to recover costs and expenses, including attorney fees, in a suit to collect a delinquent
108 installment of an assessment in the same manner as in a suit to collect a delinquent property tax.
109 *Localities that have already enacted a C-PACE ordinance prior to July 1, 2022, are exempt from the*
110 *requirement of enforcement; and*

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

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

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