

HOUSE BILL NO. 1859

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties Cities and Towns

on _____)

(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;

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

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

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

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

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

47 B. The locality may combine the loan payments required by the contracts with billings for water
48 or sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish
49 the order in which loan payments will be applied to the different charges. The locality may not combine
50 its billings for loan payments required by a contract authorized pursuant to this section with billings of
51 another locality or political subdivision, including an authority operating pursuant to Chapter 51 (§ 15.2-
52 5100 et seq.), unless such locality or political subdivision has given its consent by duly adopted resolution
53 or ordinance.

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

56 D. In order to secure the loan authorized pursuant to this section, the locality shall ~~be authorized~~
57 ~~to~~ place a voluntary special assessment lien equal in value to the loan against any property where such
58 clean energy systems, resiliency improvements, or stormwater management improvements are being
59 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 trust
69 lien on the property and recorded with the special assessment lien in the land records where the property
70 is located, and (ii) evidence that the property owner is current on payments on loans secured by a mortgage
71 or deed of trust lien on the property and on property tax payments, that the property owner is not insolvent
72 or in bankruptcy proceedings, and that the title of the benefited property is not in dispute is submitted to
73 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
75 has 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

