

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

27 in § 55.1-2000 used for residential purposes. Common areas of real estate owned by a cooperative or a  
28 property owners' association described in Subtitle IV (§ 55.1-1800 et seq.) of Title 55.1 that have a separate  
29 real property tax identification number are eligible properties. Eligible properties shall be eligible to  
30 participate in the C-PACE loan program.

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

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

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

43 B. Any locality may, by ordinance, authorize contracts to provide C-PACE loans (loans) for the  
44 initial acquisition and, installation, and refinancing of clean energy, resiliency, or stormwater management  
45 improvements with eligible improvements located on eligible properties by free and willing property  
46 owners of both existing properties and new construction, provided, however, that such loans may not be  
47 used to improve a residential dwelling with fewer than five dwelling units or a residential condominium  
48 as defined in § 55.1-2000. Such an ordinance shall include such eligible properties. The ordinance may  
49 refer to the mode of financing as Commercial Property Assessed Clean Energy (C-PACE) financing and  
50 shall include but not be limited to the following:

- 51 1. The kinds of renewable energy production and distribution facilities, energy usage efficiency  
52 eligible improvements resiliency improvements, water usage efficiency improvements, or stormwater  
53 management improvements for which loans may be offered. Resiliency improvements may include

54 ~~mitigation of flooding or the impacts of flooding or stormwater management improvements with a~~  
55 ~~preference for natural or nature based features and living shorelines as defined in § 28.2-104.1 that qualify~~  
56 ~~for loans;~~

57 2. The proposed arrangement for such C-PACE loan program (loan program), including (i) a  
58 statement concerning the source of funding ~~that will be used to pay for work performed pursuant to the~~  
59 ~~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 property~~  
62 ~~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  
64 a 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 the  
66 loan program may approve a loan application submitted within two years of the locality's issuance of a  
67 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 such  
78 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 establish  
85 the order in which loan payments will be applied to the different charges. The locality may not combine  
86 its billings for loan payments required by a contract authorized pursuant to this section with billings of  
87 another locality or political subdivision, including an authority operating pursuant to Chapter 51 (§ 15.2-  
88 5100 et seq.), unless such locality or political subdivision has given its consent by duly adopted resolution  
89 or ordinance. The locality may, either by ordinance or its program guide, delegate the billing; collection,  
90 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 C-  
92 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 energy~~  
95 ~~systems, resiliency improvements, or stormwater management~~ eligible improvements are being installed.  
96 The locality may bundle or package said loans for transfer to private lenders in such a manner that would  
97 allow the voluntary special assessment liens to remain in full force to secure the loans. The placement of  
98 a voluntary special assessment lien shall not require a new assessment on the value of the real property  
99 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 trust  
105 lien on the property and recorded with the special assessment lien in the land records where the property

106 is located, and (ii) evidence that the property owner is current on payments on loans secured by a mortgage  
107 or deed of trust lien on the property and on property tax payments, that the property owner is not insolvent  
108 or in bankruptcy proceedings, and that the title of the benefited property is not in dispute is submitted to  
109 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  
111 has 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  
113 lien 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  
117 manner 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~~  
123 loan 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 Energy,  
127 and such action shall not require the locality to undertake any competitive procurement process.

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