

SENATE BILL NO. 949

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government

on January 30, 2023)

(Patron Prior to Substitute--Senator Petersen)

A BILL to amend and reenact § 15.2-958.3 of the Code of Virginia, relating to C-PACE loans; residential dwellings and condominiums.

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

27 property owners' association described in Subtitle IV (§ 55.1-1800 et seq.) of Title 55.1 that have a separate
28 real property tax identification number are eligible properties. Eligible properties shall be eligible to
29 participate in the C-PACE loan program.

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

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

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

42 B. Any locality may, by ordinance, authorize contracts to provide C-PACE loans (loans) for the
43 initial acquisition, installation, and refinancing of eligible improvements located on eligible properties by
44 free and willing property owners of such eligible properties. The ordinance may refer to the mode of
45 financing as Commercial Property Assessed Clean Energy (C-PACE) financing and shall include but not
46 be limited to the following:

- 47 1. The kinds of eligible improvements that qualify for loans;
- 48 2. The proposed arrangement for such C-PACE loan program (loan program), including (i) a
49 statement concerning the source of funding for the C-PACE loan; (ii) the time period during which
50 contracting property owners would repay the C-PACE loan; and (iii) the method of apportioning all or
51 any portion of the costs incidental to financing, administration, and collection of the c-pace loan among
52 the parties to the C-PACE transaction;

53 3. (i) A minimum dollar amount that may be financed with respect to an eligible property; (ii) if a
54 locality or other public body is originating the loans, a maximum aggregate dollar amount that may be
55 financed with respect to loans originated by the locality or other public body, and (iii) provisions that the
56 loan program may approve a loan application submitted within two years of the locality's issuance of a
57 certificate of occupancy or other evidence that eligible improvements comply substantially with the plans
58 and specifications previously approved by the locality and that such loan may refinance or reimburse the
59 property owner for the total costs of such eligible improvements;

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

65 5. Identification of a local official authorized to enter into contracts on behalf of the locality. A
66 locality may contract with a program administrator to administer such loan program;

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

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

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

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

81 E. In order to secure the loan authorized pursuant to this section, the locality shall place a voluntary
82 special assessment lien equal in value to the loan against any property where such eligible improvements
83 are being installed. The locality may bundle or package said loans for transfer to private lenders in such a
84 manner that would allow the voluntary special assessment liens to remain in full force to secure the loans.
85 The placement of a voluntary special assessment lien shall not require a new assessment on the value of
86 the real property that is being improved under the loan program.

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

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

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

99 3. May be enforced by the local government in the same manner that a property tax lien against
100 real property is enforced by the local government. A local government shall be entitled to recover costs
101 and expenses, including attorney fees, in a suit to collect a delinquent installment of an assessment in the
102 same manner as in a suit to collect a delinquent property tax; and

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

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

109 H. The Department of Energy shall serve as a statewide sponsor for a loan program that meets the
110 requirements of this section. The Department of Energy shall engage a private program administrator
111 through a competitive selection process to develop the statewide loan program. A locality, in its adoption
112 or amendment of its C-PACE ordinance described in subsection B, may opt into the statewide C-PACE
113 loan program sponsored by the Department of Energy, and such action shall not require the locality to
114 undertake any competitive procurement process.

115 #