

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 15.2-958.3 of the Code of Virginia, relating to C-PACE financing programs.*

3 [H 1819]

4 Approved

5 **Be it enacted by the General Assembly of Virginia:**6 **1. That § 15.2-958.3 of the Code of Virginia is amended and reenacted as follows:**7 **§ 15.2-958.3. Commercial Property Assessed Clean Energy (C-PACE) financing programs.**

8 A. As used in this section:

9 "Eligible improvements" means any of the following improvements made to eligible properties:

- 10 1. Energy efficiency improvements;
- 11 2. Water efficiency and safe drinking water improvements;
- 12 3. Renewable energy improvements;
- 13 4. Resiliency improvements;
- 14 5. Stormwater management improvements;
- 15 6. Environmental remediation improvements; and
- 16 7. Electric vehicle infrastructure improvements.

17 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.

18 "Eligible properties" means all assessable commercial real estate located within the Commonwealth, with
 19 all buildings located or to be located thereon, whether vacant or occupied, whether improved or unimproved,
 20 and regardless of whether such real estate is currently subject to taxation by the locality; ~~other than a~~
 21 ~~residential dwelling with.~~ "Eligible properties" are eligible for the C-PACE loan program and may include
 22 ~~multifamily properties with no fewer than five dwelling units or a condominium as defined in § 55.1-2000~~
 23 ~~used for residential purposes. Common, common~~ areas of real estate owned by a cooperative or a property
 24 owners' association ~~described in Subtitle IV (as defined in § 55.1-1800 et seq.) of Title 55.1~~ that have a
 25 separate real property tax identification number, ~~and commercial condominiums as defined in § 55.1-1900.~~
 26 ~~Residential real estate with fewer than five units is not are~~ eligible properties. Eligible properties shall be
 27 eligible to participate in for the C-PACE loan program.

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

30 "Property owner" means the fee simple owner of eligible property or the lessee under a long-term ground
 31 lease of eligible property, including a property that is owned by a public or private entity. To be eligible for a
 32 C-PACE loan (i) the term of the C-PACE loan shall not exceed the remaining term of the ground lease, (ii)
 33 there shall be no ground lease provisions or other circumstances that would prevent the property owner from
 34 participating in the C-PACE loan program, (iii) the fee simple owner shall consent to the C-PACE loan, and
 35 (iv) the fee simple owner and the lessee under a long-term ground lease shall comply with the requirements
 36 of the C-PACE loan program, including the program guide.

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

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

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

52 1. The kinds of eligible improvements that qualify for loans;

53 2. The proposed arrangement for such C-PACE loan program (loan program), including (i) a statement
54 concerning the source of funding for the C-PACE loan; (ii) the time period during which contracting property
55 owners would repay the C-PACE loan; and (iii) the method of apportioning all or any portion of the costs
56

57 incidental to financing, administration, and collection of the C-PACE loan among the parties to the C-PACE
58 transaction;

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

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

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

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

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

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

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

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

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

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

110 G. Prior to the enactment of an ordinance pursuant to this section, a public hearing shall be held at which
111 interested persons may object to or inquire about the proposed loan program or any of its particulars. The
112 public hearing shall be published twice, with the first notice appearing no more than 28 days before and the
113 second notice appearing no less than seven days before the hearing, in a newspaper of general circulation in
114 the locality.

115 H. The Department of Energy shall serve as a statewide sponsor for a loan program that meets the
116 requirements of this section. The Department of Energy shall engage a private program administrator through
117 a competitive selection process to develop the statewide loan program. A locality, ~~in~~ by its adoption or
118 amendment of its C-PACE ordinance described in subsection B, may opt into the statewide C-PACE loan

119 program sponsored by the Department of Energy; and such action shall not require the locality to undertake
120 *without undertaking* any competitive procurement process, *provided that the locality agrees to execute a*
121 *locality agreement within 30 days after the adoption or amendment of its C-PACE ordinance.*

ENROLLED

HB1819ER