

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1760 Session of 2021

INTRODUCED BY HEFFLEY, BULLOCK, HERRIN, SCHWEYER AND WELBY, AUGUST 5, 2021

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JANUARY 12, 2022

AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania
2 Consolidated Statutes, in property assessed clean energy
3 program, further providing for purpose, for definitions, for
4 establishment of a program, for notice to lien holder
5 required for participation, for scope of work, for lien and
6 for collection of assessments.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 4301 of Title 12 of the Pennsylvania
10 Consolidated Statutes is amended to read:

11 § 4301. Purpose.

12 This chapter authorizes the establishment of a property
13 assessed clean energy program in the Commonwealth to ensure that
14 owners of agricultural, commercial and industrial properties can
15 obtain low-cost, long-term financing for energy efficiency,
16 indoor air quality, resiliency improvement, water conservation
17 and renewable energy projects.

18 Section 2. The definitions of "financial institution,"
19 "owner financing," "qualified project" and "real property" in

1 section 4302 of Title 12 are amended and the section is amended
2 by adding definitions to read:

3 § 4302. Definitions.

4 The following words and phrases when used in this chapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 * * *

8 "Financial institution." Any person who in the ordinary
9 course of business extends credit based on a lien, mortgage or
10 security interest in [real] qualifying commercial property or an
11 encumbrance of [real] qualifying commercial property or relies
12 upon a lien, mortgage or security interest in [real] qualifying
13 commercial property or an encumbrance of [real] qualifying
14 commercial property to secure a current, contingent or future
15 payment obligation. The term includes, but is not limited to,
16 the following:

17 (1) A bank, savings association, trust company, credit
18 union or a subsidiary or affiliate of a bank, savings
19 association, trust company or credit union.

20 (2) A person engaged in the mortgage lending business
21 subject to or exempt from licensing under 7 Pa.C.S. Ch. 61
22 (relating to mortgage loan industry licensing and consumer
23 protection).

24 (3) A person subject to or exempt from licensing under
25 the act of February 19, 1980 (P.L.15, No.9), known as the
26 Real Estate Licensing and Registration Act.

27 (4) A person registered as a management company or unit
28 investment trust or treated as a business development company
29 under the Investment Company Act of 1940 (54 Stat. 789, 15
30 U.S.C. § 80a-1 et seq.) or is excluded from registration

1 under the Investment Company Act of 1940.

2 (5) An insurance company.

3 (6) A pension or employee health and welfare fund.

4 (7) An association engaged in construction or the
5 development or improvement of [real] qualifying commercial
6 property.

7 (8) A condominium or cooperative association or planned
8 community association.

9 (9) A Federal, State or local agency, authority or an
10 instrumentality of a government entity that is engaged in the
11 financing or supports the financing of real estate
12 development or the purchase or improvement of real estate.

13 "Indoor air quality project." A project that improves the
14 rated performance in indoor air quality by reducing exposure to
15 indoor airborne contaminants.

16 * * *

17 "Owner financing." A bond provided by a [real] qualifying
18 commercial property owner or a third-party provider. This term
19 may include a power purchase agreement.

20 * * *

21 "Qualified project." The installation or modification of a
22 permanent improvement fixed to [real] qualifying commercial
23 property that is a clean energy project, resiliency improvement,
24 indoor air quality project, water conservation project or
25 alternative energy system[, which generates measurable energy
26 savings or reductions in water usage] and the installation is
27 performed by a qualified party in a district. The term includes
28 installation of alternative energy-generating equipment affixed
29 to the land or building.

30 ["Real property." Any agricultural, commercial or industrial

1 land or building owned by an individual, partnership, limited
2 liability corporation, corporation or nonprofit. The term does
3 not include multifamily housing or any residential property.]

4 "Qualifying commercial property." Any real property that is
5 an agricultural, commercial or industrial land or building,
6 owned by an individual, partnership, limited liability
7 corporation, corporation or nonprofit. The term does not include
8 any residential property except for commercial multifamily
9 rental property or mixed-use property that contains no fewer
10 than five residential units.

11 "Resiliency improvement." Any fixture, product, system,
12 equipment, device, material or interacting group thereof
13 intended to increase resiliency or improve the durability of
14 real property needed to withstand natural disasters, including,
15 but not limited to, flood mitigation, wind resistance, energy
16 storage and microgrids, as defined by a local government.

17 * * *

18 Section 3. Sections 4303(1)(ii), 4304 introductory paragraph
19 and (1) and 4305 of Title 12 are amended to read:

20 § 4303. Establishment of a program.

21 The following apply:

22 (1) A municipality with a community or economic
23 development department or county may establish a property
24 assessed clean energy program by adopting an ordinance or
25 resolution that will establish the program, define the
26 district and provide other operational standards and
27 guidelines, which shall include, but not be limited to, the
28 following:

29 * * *

30 (ii) Develop criteria and procedures to determine

1 the eligibility of [real] qualifying commercial property
2 and owners for participation in a program.

3 * * *

4 § 4304. Notice to lien holder required for participation.

5 Before [real] qualifying commercial property may be subject
6 to an assessment under the program and begin a local financing
7 or an owner financing of a qualified project, the following
8 shall occur:

9 (1) Any financial institution holding a lien, mortgage
10 or security interest in or other encumbrance of the [real]
11 qualifying commercial property that secures a current, future
12 or contingent payment obligation must be given written notice
13 of the [real] qualifying commercial property owner's
14 intention to participate in the program and acknowledge in
15 writing to the property owner and municipality or county that
16 established the program that they have received such notice.

17 * * *

18 § 4305. Scope of work.

19 (a) Requirement.--A program shall require for each proposed
20 [qualified] clean energy project and water conservation project
21 a scope of work, energy baseline or water usage baseline and the
22 projected energy savings or water usage reductions in order to
23 establish the viability of the qualified project and the
24 projected energy savings or water usage reductions.

25 (b) Verification of completion.--After a qualified project
26 is completed, the municipality or county shall obtain
27 verification from the [real] qualifying commercial property
28 owner and from an independent professional inspector or building
29 code official that the qualified project was properly completed.

30 Section 4. Section 4307(a)(1), (b) and (c) of Title 12 are

1 amended and the section is amended by adding subsections to
2 read:

3 § 4307. Lien.

4 (a) General rule.--An assessment under this chapter,
5 including past-due amounts and required future payments and any
6 interest or penalties on the assessment:

7 (1) shall be a first and prior lien against the [real]
8 qualifying commercial property on which the assessment is
9 imposed from the date on which the notice of contractual
10 assessment is recorded and until the assessment, interest or
11 penalty is satisfied;

12 * * *

13 (b) Lien.--The lien runs with the land and that portion of
14 the assessment under the assessment contract that has not yet
15 become due is not eliminated by foreclosure of a property tax
16 lien. [The] Notwithstanding any other provision of law, the
17 assessment cannot be accelerated or extinguished until fully
18 repaid.

19 (c) Enforcement.--The assessment lien may be enforced by the
20 municipality or county in the same manner that a property tax
21 lien against [real] qualifying commercial property may be
22 enforced by the municipality or county to the extent the
23 enforcement is consistent with the laws of this Commonwealth.

24 * * *

25 (f) Collection of delinquent installments.--A municipality
26 or county shall utilize the provisions in the act of May 16,
27 1923 (P.L.207, No.153), referred to as the Municipal Claim and
28 Tax Lien Law, or the act of July 7, 1947 (P.L.1368, No.542),
29 known as the Real Estate Tax Sale Law, to collect any delinquent
30 installments of assessments.

1 (g) Restrictions.--Program funds may NOT be used directly or <--
2 indirectly to construct, renovate or improve a residential
3 condominium, cooperative unit or any other type of owner-
4 occupied residential unit. A property financed with an
5 assessment that, upon conveyance to a third party, is no longer
6 a qualifying commercial property shall have the assessment
7 immediately discharged upon conveyance by the payment of the
8 principal amount financed, accrued interest, other charges and
9 any prepayment penalty.

10 Section 5. Section 4308(2) of Title 12 is amended to read:

11 § 4308. Collection of assessments.

12 The following apply:

13 * * *

14 (2) The assessment shall be made only upon the [real]
15 qualifying commercial property whose owner has executed a
16 written agreement with the governing body agreeing to the
17 assessment[.] and the entity providing financing for the
18 qualified project. The entity providing financing for the
19 qualified project may require the property owner to escrow or
20 otherwise provide for the maintenance, repairs and insurance
21 of the qualified project during the term of the assessment. A
22 property owner or subsequent purchaser of a qualifying
23 commercial property with an assessment may prepay the total
24 assessment amount by paying the principal amount financed,
25 accrued interest, fees, charges and any prepayment penalties
26 as specified in the financing agreement and, upon prepayment,
27 the assessment shall be released.

28 * * *

29 Section 6. This act shall take effect in 60 days.