

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 635 Session of 2021

INTRODUCED BY YUDICHAK, BOSCOLA, KANE, KEARNEY, MENSCH, TARTAGLIONE, ARGALL, SCAVELLO, CAPPELLETTI, COLLETT AND L. WILLIAMS, MAY 4, 2021

SENATOR YUDICHAK, COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT, AS AMENDED, SEPTEMBER 29, 2021

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 which improves
14 health or performance outcomes THE RATED PERFORMANCE OF INDOOR <--
15 AIR QUALITY by reducing exposure to indoor airborne
16 contaminants.

17 * * *

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

21 * * *

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

1 to the land or building.

2 ["Real property." Any agricultural, commercial or industrial
3 land or building owned by an individual, partnership, limited
4 liability corporation, corporation or nonprofit. The term does
5 not include multifamily housing or any residential property.]

6 "Qualifying commercial property." As follows:

7 (1) Real property that meets any of the following <--
8 criteria:

9 (i) Any real property that is agricultural,
10 commercial, industrial or multifamily housing with five
11 or more units owned by an individual, partnership,
12 limited liability corporation, corporation or nonprofit.

13 (ii) A mixed use real property of any of the <--
14 property types under subparagraph (i), whether land or
15 building.

16 (2) The term does not include property that is <--
17 residential housing with four or fewer units.

18 "Resiliency improvement." Any fixture, product, system,
19 equipment, device, material or interacting group of fixtures,
20 products, systems, equipment, devices or materials intended to
21 increase resiliency or improve the durability of real property,
22 including flood mitigation, wind resistance, energy storage,
23 microgrids and backup power generation or otherwise designated
24 by a local government entity. ANY RESIDENTIAL PROPERTY, EXCEPT <--
25 FOR A COMMERCIAL, MULTIFAMILY RENTAL PROPERTY OR MIXED-USE
26 PROPERTY WHICH CONTAINS NO LESS THAN FIVE RESIDENTIAL UNITS.

27 "RESILIENCY IMPROVEMENT." ANY FIXTURE, PRODUCT, SYSTEM,
28 EQUIPMENT, DEVICE, MATERIAL OR INTERACTING GROUP, THEREOF
29 INTENDED TO INCREASE RESILIENCE OR IMPROVE THE DURABILITY OF
30 QUALIFYING COMMERCIAL PROPERTY, NEEDED TO WITHSTAND NATURAL

1 DISASTERS, INCLUDING, BUT NOT LIMITED TO, FLOOD MITIGATION, WIND
2 RESISTANCE, ENERGY STORAGE AND MICROGRIDS, AS DEFINED BY A LOCAL
3 GOVERNMENT.

4 * * *

5 Section 3. Sections 4303(1)(ii), 4304 introductory paragraph
6 and (1) and ~~4305(b)~~ 4305 of Title 12 are amended to read: <--

7 § 4303. Establishment of a program.

8 The following apply:

9 (1) A municipality with a community or economic
10 development department or county may establish a property
11 assessed clean energy program by adopting an ordinance or
12 resolution that will establish the program, define the
13 district and provide other operational standards and
14 guidelines, which shall include, but not be limited to, the
15 following:

16 * * *

17 (ii) Develop criteria and procedures to determine
18 the eligibility of [real] qualifying commercial property
19 and owners for participation in a program.

20 * * *

21 § 4304. Notice to lien holder required for participation.

22 Before [real] qualifying commercial property may be subject
23 to an assessment under the program and begin a local financing
24 or an owner financing of a qualified project, the following
25 shall occur:

26 (1) Any financial institution holding a lien, mortgage
27 or security interest in or other encumbrance of the [real]
28 qualifying commercial property that secures a current, future
29 or contingent payment obligation must be given written notice
30 of the [real] qualifying commercial property owner's

1 intention to participate in the program and acknowledge in
2 writing to the property owner and municipality or county that
3 established the program that they have received such notice.

4 * * *

5 § 4305. Scope of work.

6 * * *

<--

7 (A) REQUIREMENT.--A PROGRAM SHALL REQUIRE FOR EACH PROPOSED
8 [QUALIFIED] CLEAN ENERGY PROJECT AND WATER CONSERVATION PROJECT
9 A SCOPE OF WORK, ENERGY BASELINE OR WATER USAGE BASELINE AND THE
10 PROJECTED ENERGY SAVINGS OR WATER USAGE REDUCTIONS IN ORDER TO
11 ESTABLISH THE VIABILITY OF THE QUALIFIED PROJECT AND THE
12 PROJECTED ENERGY SAVINGS OR WATER USAGE REDUCTIONS.

<--

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

18 Section 4. Section 4307(a) (1) ~~and~~, (b) AND (C) of Title 12
19 are amended and the section is amended by adding ~~a subsection~~
20 SUBSECTIONS to read:

<--

<--

<--

21 § 4307. Lien.

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

25 (1) shall be a first and prior lien against the [real]
26 qualifying commercial property on which the assessment is
27 imposed from the date on which the notice of contractual
28 assessment is recorded and until the assessment, interest or
29 penalty is satisfied;

30 * * *

1 (b) Lien.--The lien runs with the land and that portion of
2 the assessment under the assessment contract that has not yet
3 become due is not eliminated by foreclosure of a property tax
4 lien. [The] Notwithstanding any other provision of law, the
5 assessment cannot be accelerated or extinguished until fully
6 repaid.

7 (C) ENFORCEMENT.--THE ASSESSMENT LIEN MAY BE ENFORCED BY THE <--
8 MUNICIPALITY OR COUNTY IN THE SAME MANNER THAT A PROPERTY TAX
9 LIEN AGAINST [REAL] QUALIFYING COMMERCIAL PROPERTY MAY BE
10 ENFORCED BY THE MUNICIPALITY OR COUNTY TO THE EXTENT THE
11 ENFORCEMENT IS CONSISTENT WITH THE LAWS OF THIS COMMONWEALTH.

12 * * *

13 (f) Collection.--A municipality or county shall utilize the
14 provisions under the act of July 7, 1947 (P.L.1368, No.542),
15 known as the Real Estate Tax Sale Law, or the act of May 16,
16 1923 (P.L.207, No.153), referred to as the Municipal Claim and
17 Tax Lien Law, to collect delinquent installments of assessments.

18 (G) RESTRICTIONS.--PROGRAM FUNDS MAY NOT BE USED DIRECTLY OR <--
19 INDIRECTLY TO CONSTRUCT, RENOVATE OR IMPROVE A RESIDENTIAL
20 CONDOMINIUM, COOPERATIVE UNIT OR ANY OTHER TYPE OF OWNER-
21 OCCUPIED RESIDENTIAL UNIT. A PROPERTY FINANCED WITH AN
22 ASSESSMENT THAT, UPON CONVEYANCE TO A THIRD PARTY, IS NO LONGER
23 A QUALIFYING COMMERCIAL PROPERTY SHALL HAVE THE ASSESSMENT
24 IMMEDIATELY DISCHARGED UPON CONVEYANCE BY THE PAYMENT OF
25 THE PRINCIPAL AMOUNT FINANCED, ACCRUED INTEREST, OTHER CHARGES
26 AND ANY PREPAYMENT PENALTY.

27 Section 5. Section 4308(2) of Title 12 is amended to read:
28 § 4308. Collection of assessments.

29 The following apply:

30 * * *

1 (2) The assessment shall be made only upon the [real]
2 qualifying commercial property whose owner has executed a
3 written agreement with the governing body agreeing to the
4 assessment [.] AND THE ENTITY PROVIDING FINANCING FOR <--
5 THE QUALIFIED PROJECT. THE ENTITY PROVIDING FINANCING FOR THE
6 QUALIFIED PROJECT MAY REQUIRE THE PROPERTY OWNER TO ESCROW OR
7 OTHERWISE PROVIDE FOR THE MAINTENANCE, REPAIRS AND INSURANCE
8 OF THE QUALIFIED PROJECT DURING THE TERM OF THE ASSESSMENT. A
9 PROPERTY OWNER OR SUBSEQUENT PURCHASER OF A QUALIFYING
10 COMMERCIAL PROPERTY WITH AN ASSESSMENT MAY PREPAY THE TOTAL
11 ASSESSMENT AMOUNT BY PAYING THE PRINCIPAL AMOUNT FINANCED,
12 ACCRUED INTEREST, FEES, CHARGES AND ANY PREPAYMENT PENALTIES
13 AS SPECIFIED IN THE FINANCING AGREEMENT AND, UPON PREPAYMENT,
14 THE ASSESSMENT SHALL BE RELEASED.

15 * * *

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