

SENATE BILL 431

By Rose

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 5 and Title 68, relative to the Commercial Property Assessed Clean Energy and Resilience Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following as a new chapter:

68-205-101.

(a) This chapter is known and may be cited as the "Commercial Property Assessed Clean Energy and Resilience Act."

(b) It is the intent of the general assembly to authorize the establishment of a commercial property assessed clean energy and storm resiliency (C-PACER) program that jurisdictions may voluntarily implement to ensure that free and willing owners of agricultural, commercial, industrial, and multifamily residential properties can obtain low-cost, long-term financing for qualifying improvements. By authorizing local governments to adopt C-PACER programs, the general assembly finds that a valid public purpose exists because the use of C-PACER will increase economic development, lower insurance costs, and lower disaster and emergency response and aid costs to local governments. C-PACER programs will also decrease energy and water costs and encourage energy and water sustainability.

68-205-102.

As used in this chapter:

(1) "Capital provider" means a private third-party entity, including its designee, successor, and assigns, that makes or funds C-PACER financing, including refinancing, under this chapter;

(2) "Commercial property" means privately owned commercial, industrial, or agricultural real property, or privately owned residential real property consisting of five (5) or more dwelling units, and includes property owned by nonprofit, charitable, or religious organizations;

(3) "C-PACER program" or "program" means a commercial property assessed clean energy program established under this chapter;

(4) "Financing" means financing and refinancing for qualified projects under this chapter;

(5) "Financing agreement" means the contract under which a property owner agrees to repay a capital provider for the C-PACER financing, including, but not limited to, details of finance charges, fees, debt servicing, accrual of interest and penalties, and terms relating to treatment of prepayment and partial payment, billing, collection, and enforcement of the C-PACER financing;

(6) "Local government" means a county, metropolitan government, municipality, or other political subdivision of this state;

(7) "Program administrator" means the department or individual within a local government designated to administer a C-PACER program, or a private and independent third party designated by the local government; provided, that the administration procedures used conform to this chapter;

(8) "Program guidebook" means a comprehensive document that illustrates the applicable program and establishes appropriate guidelines, specifications, underwriting and approval criteria, and standard application forms

consistent with the administration of a program and not detailed in this chapter, including:

(A) A form assessment contract between the local government and the property owner specifying the terms of assessment under the program, financing provided by a third party, and remedies for default or foreclosure;

(B) A form local government Notice of Assessment and C-PACER lien; or

(C) A form Notice of Assignment of Assessment and C-PACER lien between a local government and a capital provider;

(9) "Project application" means an application submitted to a program to demonstrate that a proposed project qualifies for C-PACER financing and for a C-PACER assessment and lien;

(10) "Property owner" means the owner or owners on title, duly recorded, of a commercial property;

(11) "Qualified improvement" means a permanent improvement installed and affixed to commercial property and intended to:

(A) Decrease energy consumption or demand through the use of efficiency technologies, products, or activities that reduce or support the reduction of energy consumption;

(B) Support the production of clean, renewable energy, including through the use of a product, device, or interacting group of products or devices on the customer's side of the meter that generates electricity, provides thermal energy, or regulates temperature;

(C) Decrease water consumption or demand and address safe drinking water through the use of efficiency technologies, products, or activities that reduce or support the reduction of water consumption;

(D) Allow for the reduction or elimination of lead from water that may be used for drinking or cooking; or

(E) Increase water or waste water resilience, including through storm retrofits, flood mitigation, and stormwater management, or wind resistance, energy storage, microgrids, and other resilience projects approved by the local government;

(12) "Qualified project" means a project approved by the program administrator, involving the installation or modification of a qualified improvement, including new construction or the adaptive reuse of eligible property with a qualified improvement, and including qualified improvements installed no more than two (2) years prior to the date of application;

(13) "Record owner" means the owner listed on the property's legal documents on file or the owner of an estate for years created pursuant to a written ground lease agreement or similar agreement; and

(14) "Region" means a geographical area as determined by a county pursuant to § 68-205-104.

68-205-103.

(a) A local government may impose a voluntary special assessment to repay the financing of qualified projects on commercial property located in a region.

(b) A local government shall not impose an assessment to repay the financing of the purchase or installation of products or devices not permanently affixed to commercial property.

(c) A local government may impose a voluntary special assessment only after a project application is approved. The special assessment must be created through a written contract between the local government and the record owner or the owner of an estate for years of the property to be assessed, and created pursuant to a written ground lease or similar agreement.

(d) Prior to entering into the written assessment contract, the property owner shall obtain and furnish to the local government a written statement, executed by each holder of a mortgage or deed of trust on the property securing indebtedness, in the sole and absolute discretion of each holder of a mortgage or deed of trust on the property, that consents to the assessment and indicates that the assessment does not constitute an event of default under the mortgage or deed of trust.

68-205-104.

(a) A local government may establish a C-PACER program and exercise all powers granted under this chapter.

(b)

(1) The local government shall designate a region within its boundaries as an area in which C-PACER activities are eligible.

(2) If the local government is a county, then the region designated may encompass the whole of the unincorporated and incorporated areas inside the county's boundaries.

(c) Except as otherwise provided in subsection (g), a local government that establishes a program may enter into a written assessment contract with a property owner to establish a voluntary assessment to repay the owner's financing of a qualified project on the owner's property as long as the conditions set forth in § 68-205-103 are met.

(d) A local government may administer a program, delegate administration pursuant to § 68-205-107, or delegate the administration to a single, independent, and qualified third party for the region as identified in subsection (b).

(e) If the program provides for third-party administration, then the local government official authorized to enter into a written contract with a property owner pursuant to subsection (c) shall also enter into a written contract with the party that administers the program. The contract must require the third party to reimburse the local government for costs associated with monitoring the program, imposing the assessment, and billing and collecting payments on behalf of the third party.

(f) The financing for assessments imposed may include, but is not limited to:

- (1) The cost of materials and labor necessary for the installation or modification of a qualified improvement;
- (2) Permit fees;
- (3) Inspection fees;
- (4) Lender fees;
- (5) Program application and administrative fees;
- (6) Project development and engineering fees;
- (7) Interest reserves;
- (8) Capitalized interest, in an amount determined by the owner of the commercial property and the third party providing financing under this section;
and
- (9) Other fees or costs incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.

(g) The written assessment contract constitutes written notice to the record owner that the owner may be responsible for the payment of any remaining principal balance of the assessment upon the refinance or sale of the property unless the remaining principal balance is assumed by the acquiring property owner. The local government shall require each record owner to acknowledge, in writing, the notice as part of the execution of the contract.

68-205-105.

(a) To establish a C-PACER program under this chapter, the local government must act in the following order:

(1) Adopt a resolution of intent that includes:

(A) A finding that the financing of qualified projects through special assessments is a valid public purpose;

(B) A statement that the local government intends to authorize direct financing between property owners and capital providers as the means to finance qualified projects;

(C) A statement that the local government intends to authorize special assessments, entered into voluntarily by a property owner with the local government by means of the written assessment contract, as the means to repay the financing for qualified projects available to property owners;

(D) A description of the types of qualified projects that may be subject to special assessments;

(E) A description of the boundaries of the region;

(F) A description of any proposed arrangements for administration of the program, including administration pursuant to this chapter, to be available;

(G) A description of local government debt-servicing procedures if a third party is responsible for servicing the installment payments on the C-PACER financing, unless delegated pursuant to § 68-205-107(b);

(H) A statement of the time and place for a public hearing on the proposed program as required in subdivision (a)(2); and

(I) A statement identifying the appropriate local official and the county tax collector for consulting about the collection of proposed special assessments with property taxes imposed on the assessed property;

(2) Hold a hearing for the public to comment on the proposed program;

and

(3) Adopt a resolution establishing the program and its terms.

(b) Subject to the terms of the resolution establishing the program as provided in subdivision (a)(3), the local government may amend a program by resolution.

(c) A local government may:

(1) Hire and set the compensation of a program administrator and program staff;

(2) Delegate or contract for professional or administrative services necessary to administer the program on a nonexclusive basis; or

(3) Delegate administration pursuant to § 68-205-107(b).

(d) A local government is authorized to impose fees to offset the actual and reasonable costs of administering a program. The fees may be assessed as part of the program application, to be paid by the property owner requesting to participate in the

program. Service fees of approved applications may be calculated as one percent (1%) of the total amount financed, not to exceed fifty thousand dollars (\$50,000). Service fees retained by a local government must be placed into a reserve account and utilized for assessor-related costs if the local government chooses to exercise its authority under § 68-205-107(d). If the local government does not choose to exercise its authority under § 68-205-107(d), then the funds must be placed into an account designated by the local government.

68-205-106.

The terms of a program required pursuant to § 68-205-105(a)(3) must include:

- (1) Appropriate eligibility factors, including certification by the property owner that:
 - (A) The property owner requesting to participate in the program:
 - (i) Is the legal owner of the benefited property;
 - (ii) Is current on mortgage and property tax payments; and
 - (iii) Is not insolvent or in bankruptcy proceedings; and
 - (B) The title of the benefited property is not in dispute;
- (2) A requirement that the amount of the assessment plus any existing indebtedness on the property does not:
 - (A) Exceed ninety percent (90%) of the value of the property, with the exception that properties qualified under the federal low-income housing tax credit program set forth in 26 U.S.C. § 42 are exempt from this requirement; and
 - (B) Exceed twenty-five percent (25%) of the fair market value of the property;

(3) A description of the types of qualified projects that may be subject to special assessments;

(4) A statement identifying the local government official authorized to enter into and execute written contracts on behalf of the local government;

(5) A statement that the period of the special assessment must not exceed the weighted average of the useful life of the qualified project that is the basis for the assessment;

(6) A statement explaining the manner in which property will be assessed and how assessments will be collected;

(7) The procedures for billing and collecting the voluntary special assessments and remedies for enforcement of delinquent special assessments, unless the local government delegates these duties pursuant to § 68-205-107(b); and

(8) If applicable, the procedures for qualifying capital providers for performing program administration duties under § 68-205-107(b).

68-205-107.

(a) A program must establish a C-PACER application and review process to evaluate project applications for C-PACER financing. The program must prescribe the form and manner of the application. At a minimum:

(1) An applicant must demonstrate that the project provides a benefit to the public, in the form of energy or water resource conservation, reduced public health costs or risk, or reduced public emergency response cost or risk;

(2) For an existing building:

(A) Where energy or water usage improvements are proposed, an applicant must provide:

(i) An energy analysis by a licensed engineering firm, engineer, or other qualified professional listed in the program guidebook; and

(ii) A statement by the author of the analysis that the proposed qualified improvements will either result in more efficient use or conservation of energy or water, the reduction of greenhouse gas emissions, or the addition of renewable sources of energy or water; or

(B) Where resilience improvements are proposed, an applicant must provide certification by a licensed professional engineer stating that the qualified improvements will result in improved resilience; and

(3) For new construction, an applicant must provide certification by a licensed professional engineer or engineering firm stating that the proposed qualified improvements will enable the project to exceed the current building code's requirements for:

(i) Energy efficiency;

(ii) Water efficiency;

(iii) Renewable energy;

(iv) Renewable water; or

(v) Resilience.

(b) A local government shall establish a process for reviewing and approving applications for financings. The local government may require a qualified capital provider to certify to the local government, in accordance with a process approved by the local government, that the property owner and the project qualifies for financing within this act and complies with this chapter and the program guidebook.

(c) The local government's duties shall also include:

(1) Execution and recording of the written assessment contract between the property owner and the local government, by a duly authorized official, as well as execution and recording of the local government Notice of Assessment and C-PACER lien; and

(2) Execution and recording of the assignment of the assessment agreement, the Notice of Assessment and C-PACER lien, and Notice of Assignment of Assessment and C-PACER lien to the capital provider.

(d) A local government may choose to bill, collect, and enforce the C-PACER assessment and lien, subject to the following guidelines:

(1) The local government may enforce the assessment lien in the same manner that a property tax lien against commercial property is enforced by the local government as follows:

(A) Delinquent installments of the assessment incurs interest and penalties in the same manner as delinquent property taxes; and

(B) In an enforcement or foreclosure action, assessments not yet due shall not be accelerated or eliminated by foreclosure, including the foreclosure of a property tax; and

(2) The local government may delegate these responsibilities to the capital provider if the capital provider is solely responsible for billing, collection, and enforcement of the special assessment and lien. Under this subsection (d), delinquent installments incur interest and penalties as specified in the financing agreement between the property owner and capital provider. Enforcement of a delinquent installment must be in the same manner as that of a deed of trust, except that assessments not yet due may not be accelerated or eliminated by

foreclosure of the past due amount of the lien. Outstanding and delinquent property taxes at the time of the enforcement action must be satisfied along with the delinquent amounts of the special assessment, subject to § 68-205-110; and

(3) The local government, its officers, and employees, are not liable at law or equity for actions taken pursuant to this section, except in cases of gross negligence, recklessness, or willful misconduct.

(e) After an approved project is completed, an applicant shall provide to the local government written verification, as defined in the program guidebook, stating that the qualified project was properly completed and is operating as intended.

(f) For an improved project, the capital provider may be subject to an audit regarding the assignment of the C-PACER assessment and lien from the local government or program administrator.

68-205-108.

The proposed arrangements for financing a qualified project may authorize the property owner to:

(1) Directly purchase the related equipment and materials for the installation or modification of a qualified improvement; or

(2) Contract directly, including through lease, power purchase agreement, or other service contract, for the related equipment and materials used in the installation or modification of a qualified improvement.

68-205-109.

(a) A local government that authorizes financing through special assessments under this chapter shall:

(1) File a written Notice of Assessment and C-PACER lien in the records of the office of the county register of deeds of the county in which the property is located. The notice must contain:

- (A) The amount of the assessment;
- (B) The legal description of the property;
- (C) The name of each property owner;
- (D) A copy of the written assessment contract; and
- (E) A reference to this section authorizing the placement of the assessment and C-PACER lien on the property;

(2) File and record each C-PACER lien in the real property records of the county in which the property is located. The recording must contain:

- (A) The legal description of the eligible property;
- (B) The name of each property owner;
- (C) The date on which the lien was created;
- (D) The principal amount of the lien; and
- (E) The term of the lien; and

(3) Record the executed assignment of the assessment agreement, notice of assignment of assessment, and C-PACER lien, or may delegate the recording to the capital provider receiving the assignment.

(b) The amount of funds allotted through a program must be segregated from the calculation of the undisputed portions necessary for property tax appeals under title 67, chapter 5.

68-205-110.

(a) Except as otherwise provided in subsection (e), a special assessment that complies with § 68-205-103, and any interest or penalties on the assessment:

(1) Is a first and prior lien against the commercial property on which the assessment is imposed, from the date on which the notice of special assessment is recorded pursuant to § 68-205-109, until the assessment, interest, or penalty is paid; and

(2) Has the same priority status as a lien for any other ad valorem tax.

(b) The lien runs with the land, and that portion of the assessment under the assessment contract that is not yet due must not be accelerated or eliminated by foreclosure of a property tax lien.

(c) A provision of a deed of trust, mortgage, or other agreement between a lienholder and a property owner providing for the acceleration of any payment under the deed of trust, mortgage, or agreement solely as the result of entering into an agreement to finance an assessment is unenforceable under an executed consent pursuant to this chapter. A lienholder or loan servicer may increase the monthly amount held in escrow as required to annually pay the assessment.

68-205-111.

The local government may contract with another local governmental entity, including a county assessor of property, to perform the duties of the local government relating to the billing, collection, enforcement, and remittance of special assessments imposed pursuant to this chapter.

68-205-112.

(a) A combination of local governments may agree to jointly implement or administer a program under this chapter.

(b) If two (2) or more local governments implement a program jointly, then a single public hearing held jointly by the cooperating local governments is sufficient to satisfy § 68-205-105(a)(2).

(c) One (1) or more local governments may contract with a third party, including another local government, to administer a program on a nonexclusive basis.

(d) If one (1) or more local governments contract with a third party, including another local government, to administer a program, then other qualified third parties must also be granted the right to enter into a contract to administer the program on the same terms.

68-205-113.

A local government that establishes a region shall not:

(1) Make the issuance of a permit, license, or other authorization from the local government to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of a qualified project through special assessments under this chapter; or

(2) Otherwise compel a person who owns property in the region to enter into a written contract to repay the financing of a qualified project through special assessments.

68-205-114.

Residential property consisting of four (4) or fewer dwelling units does not qualify for financing under the C-PACER program.

68-205-115.

The state, a county, or local government shall not use public funds to fund or repay a loan between a capital provider and property owner. This chapter does not pledge, offer, or encumber the full faith and credit of a local government. A local government shall not pledge, offer, or encumber its full faith and credit for a lien amount through a C-PACER program.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. This act takes effect July 1, 2021, the public welfare requiring it.