

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred  
3 Senate Bill No. 138 entitled “An act relating to commercial property-assessed  
4 clean energy projects” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 24 V.S.A. chapter 87, subchapter 3 is added to read:

8 Subchapter 3. Commercial Property-Assessed Clean Energy

9 § 3275. COMMERCIAL PROPERTY-ASSESSED CLEAN ENERGY

10 DISTRICTS; APPROVAL OF VOTERS

11 (a)(1) In this subchapter, “district” means a property-assessed clean energy  
12 district.

13 (2) The legislative body of a town, city, or incorporated village may  
14 submit to the voters of the municipality the question of whether to designate  
15 the municipality as a property-assessed clean energy district. In a district, only  
16 those property owners who have entered into written agreements with the  
17 municipality under section 3276 of this title would be subject to a special  
18 assessment, as set forth in section 3255 of this title.

19 (b) Upon a vote of approval by a majority of the qualified voters of the  
20 municipality voting at an annual or special meeting duly warned for that  
21 purpose, the municipality may incur indebtedness for or otherwise finance

1 projects relating to renewable energy, as defined in 30 V.S.A. § 8002(17), or to  
2 eligible projects relating to energy efficiency as defined by section 3267 of this  
3 title, undertaken by owners of commercial or industrial buildings within the  
4 boundaries of the town, city, or incorporated village.

5 (c) As used in this chapter, “commercial or industrial building” means any  
6 building other than a residential dwelling.

7 § 3276. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS;  
8 ENERGY SAVINGS ANALYSIS

9 (a) Upon an affirmative vote made pursuant to section 3275 of this title and  
10 the performance of an energy savings analysis pursuant to subsection (b) of  
11 this section, an owner of a commercial or industrial building, within the  
12 boundaries of a district, may enter into a written agreement with the  
13 municipality that shall constitute the owner’s consent to be subject to a special  
14 assessment, as set forth in section 3255 of this title. Entry into such an  
15 agreement may occur only after January 1, 2027. A participating municipality  
16 shall follow underwriting criteria established by the Department of Financial  
17 Regulation and shall establish other qualifying criteria to provide an adequate  
18 level of assurance that property owners will have the ability to meet  
19 assessment payment obligations. A participating municipality shall refuse to  
20 enter into a written agreement with a property owner who fails to meet the  
21 underwriting or other qualifying criteria.

1        (b) Prior to entering into a written agreement, a property owner shall have  
2        analyses performed to quantify the project costs and energy savings and  
3        estimated carbon impacts of the proposed energy improvements, including an  
4        annual cash-flow analysis, as well as the following analyses:

5            (1) where energy or water usage improvements are proposed, an energy  
6            analysis by a licensed engineering firm or engineer, or other qualified  
7            professional listed in the program guidebook, stating that the proposed  
8            qualified improvements will either result in more efficient use or conservation  
9            of energy or water, the reduction of greenhouse gas emissions, or the addition  
10          of renewable sources of energy or water,

11           (2) where renewable energy is proposed, an engineering study showing  
12          that the improvements are feasible;

13           (3) where resilience improvements are proposed, certification by a  
14          licensed professional engineer stating that the qualified improvements will  
15          result in improved resilience; or

16           (4) for new construction, certification by a licensed professional  
17          engineer or engineering firm stating that the proposed qualified improvements  
18          will enable the project to exceed the energy efficiency or water efficiency or  
19          renewable energy or water usage or resilience requirements of the current  
20          building code.

21          (c) A written agreement shall provide that:

1           (1) The length of time allowed for the property owner to repay the  
2           assessment shall not exceed the life expectancy of the project. In instances  
3           where multiple projects have been installed, the length of time shall not exceed  
4           the average lifetime of all projects, weighted by cost. Lifetimes of projects  
5           shall be determined by the entities appointed as energy efficiency utilities  
6           under 30 V.S.A. § 209(d)(2) or another qualified technical entity designated by  
7           a participating municipality.

8           (2) Notwithstanding any other provision of law:

9           (A) At the time of a transfer of property ownership including  
10          foreclosure, the past due balances of any special assessment under this  
11          subchapter shall be due for payment, but future payments shall continue as a  
12          lien on the property.

13          (B) In the event of a foreclosure action, the past due balances  
14          described in subdivision (A) of this subdivision (2) shall include all payments  
15          on an assessment under this subchapter that are due and unpaid as of the date  
16          the action is filed, and all payments on the assessment that become due after  
17          that date and that accrue up to and including the date title to the property is  
18          transferred to the mortgage holder, the lien holder, or a third party in the  
19          foreclosure action. The person or entity acquiring title to the property in the  
20          foreclosure action shall be responsible for payments on the assessment that  
21          become due after the date of such acquisition.

1           (3) A participating municipality shall disclose to participating property  
2           owners each of the following:

3                   (A) the risks associated with participating in the program, including  
4                   risks related to the failure of participating property owners to make payments  
5                   and the risk of foreclosure; and

6                   (B) the provisions of subsection (h) of this section that pertain to  
7                   prepayment of the assessment.

8           (d) A written agreement or notice of an agreement and the analysis  
9           performed pursuant to subsection (b) of this section shall be filed with the clerk  
10           of the applicable municipality for recording in the land records of that  
11           municipality and shall be disclosed to potential buyers prior to transfer of  
12           property ownership. Personal financial information provided to a municipality  
13           by a participating property owner or potential participating property owner  
14           shall not be subject to disclosure as set forth in 1 V.S.A. § 317(c)(7). If a  
15           notice of agreement is filed instead of the full written agreement, the notice  
16           shall attach the analysis performed pursuant to subsection (b) of this section  
17           and shall include at least each of the following:

18                   (1) the name of the property owner as grantor;

19                   (2) the name of the municipality as grantee;

20                   (3) the date of the agreement;

1           (4) a legal description of the real property against which the assessment  
2           is made pursuant to the agreement;

3           (5) the amount of the assessment and the period during which the  
4           assessment will be made on the property;

5           (6) a statement that the assessment will remain a lien on the property  
6           until paid in full or released; and

7           (7) the location at which the original or a true, legible copy of the  
8           agreement may be examined.

9           (e) The property owner shall provide to the holders of any existing  
10          mortgages on the property notice of intent to enter into the written agreement.

11          (f) The combined amount of the assessment plus any outstanding mortgage  
12          obligations for the property shall not exceed 90 percent of the assessed value of  
13          that property.

14          (g) With respect to an agreement under this section:

15               (1) the assessments to be repaid under the agreement, when calculated  
16               as if they were the repayment of a loan, shall not violate 9 V.S.A. §§ 41a, 43,  
17               44, and 46–50; and

18               (2) the maximum length of time for the owner to repay the assessment  
19               shall not exceed 30 years.

20          (h) There shall be no penalty or premium for prepayment of the outstanding  
21          balance of an assessment under this subchapter if the balance is prepaid in full.

1        (i) Property may be eligible for financing if otherwise qualified  
2        improvements were completed and operational not more than 36 months prior  
3        to submission of the application to the program. Waivers to the 36-month  
4        requirement may be granted in the sole discretion of the program  
5        administrator.

6        § 3277. RULEMAKING

7        The Commissioner of Financial Regulation, in consultation with the  
8        Secretary of Natural Resources, may adopt rules to implement this subchapter  
9        related to commercial property-assessed clean energy projects.

10       Sec. 2. 24 V.S.A. § 3263 is amended to read:

11       § 3263. COSTS OF OPERATION OF DISTRICT

12       The owners of real property who have entered into written agreements with  
13       the municipality under section 3262 or section 3276 of this title shall be  
14       obligated to cover the costs of operating the district. A municipality may use  
15       other available funds to operate the district

16       Sec. 3. 24 V.S.A. § 3264 is amended to read:

17       § 3264. RIGHTS OF PROPERTY OWNERS

18       A property owner who has entered into a written agreement with the  
19       municipality under section 3262 or section 3276 of this title may enter into a  
20       private agreement for the installation or construction of a project relating to

renewable energy, as defined in 30 V.S.A. § 8002(17), or relating to energy efficiency as defined in section 3267 of this title.

Sec. 4. 24 V.S.A. § 3265 is amended to read:

§ 3265. LIABILITY OF MUNICIPALITY

(a) A municipality that incurs indebtedness for or otherwise finances projects under this subchapter or subchapter 3 of this chapter shall not be liable for the failure of performance of a project.

(b) A municipality that incurs indebtedness for bonding under this subchapter or subchapter 3 of this chapter shall pledge the full faith and credit of the municipality.

Sec. 5. 24 V.S.A. § 3266 is amended to read:

§ 3266. INTERMUNICIPAL AGREEMENTS

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter or subchapter 3 of this chapter.

Sec. 6. 24 V.S.A. § 3267 is amended to read:

§ 3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS; ASSISTANCE TO MUNICIPALITIES

Those entities appointed as energy efficiency utilities under 30 V.S.A. § 209(d):



1           (1) shall develop a list of eligible energy efficiency projects and shall  
2           make the list available to the public on or before July 1 of each year; and

3           (2) shall provide information concerning implementation of this  
4           subchapter and subchapter 3 of this chapter to each municipality, within the  
5           area in which the entity delivers efficiency services, that requests such  
6           information, and shall contact each such municipality that votes to establish a  
7           district to offer this information

8           Sec. 7. 24 V.S.A. § 3268 is amended to read:

9           § 3268. RELEASE OF LIEN

10          (a) A municipality shall release a participating property owner of the lien  
11          on the property against which the assessment under this subchapter or  
12          subchapter 3 of this chapter is made upon full payment of the value of the  
13          assessment.

14          (b) Notice of a release of a lien for an assessment under this subchapter or  
15          subchapter 3 of this chapter shall be filed with the clerk of the applicable  
16          municipality for recording in the land records of that municipality.

17          Sec. 8. 24 V.S.A. § 3255 is amended to read:

18          § 3255. COLLECTION OF ASSESSMENTS; LIENS

19          (a) Special assessments under this chapter shall constitute a lien on the  
20          property against which the assessment is made in the same manner and to the  
21          same extent as taxes assessed on the grand list of a municipality, and all

1 procedures and remedies for the collection of taxes shall apply to special  
2 assessments.

3 (b) Notwithstanding subsection (a) of this section, a lien for an assessment  
4 under subchapter 2 of this chapter shall be subordinate to all liens on the  
5 property in existence at the time the lien for the assessment is filed on the land  
6 records, shall be subordinate to a first mortgage on the property recorded after  
7 such filing, and shall be superior to any other lien on the property recorded  
8 after such filing. In no way shall this subsection affect the status or priority of  
9 any municipal lien other than a lien for an assessment under subchapter 2 of  
10 this chapter. A lien for an assessment under subchapter 3 of this chapter shall  
11 not be subordinate to all liens on the property in existence at the time the lien  
12 for the assessment is filed on the land records.

13 Sec. 9. 9 V.S.A. § 46 is amended to read:

14 § 46. EXCEPTIONS

15 Section 43 of this title, relating to deposit requirements, and section 45 of  
16 this title, relating to prepayment penalties, shall not apply and the parties may  
17 contract for a rate of interest in excess of the rate provided in section 41a of  
18 this title in the case of:

19 (1) obligations of corporations, including municipal and nonprofit  
20 corporations; ~~or~~

