

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 LEGISLATIVE BODY

11 (a)(1) The legislative body of a town, city, or incorporated village may vote
12 to designate the municipality as a commercial property-assessed clean energy
13 district or C-PACE district. In a district, only those property owners who have
14 entered into written agreements with the municipality under section 3276 of
15 this title would be subject to a special assessment, as set forth in section 3255
16 of this title.

17 (2) In this subchapter, “district” means a commercial property-assessed
18 clean energy district which includes the entire municipality.

19 (b) Upon a vote of approval by a majority of the legislative body of the
20 municipality voting at a duly warned meeting, the municipality shall allow for
21 the imposition of a special assessment to secure private financing for property

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

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

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

9 (a) Upon an affirmative vote made pursuant to section 3275 of this title and
10 the performance of an analysis pursuant to subsection (b) of this section, an
11 owner of a commercial or industrial building, within the boundaries of a
12 district, may enter into a written agreement with the municipality that shall
13 constitute the owner’s consent to be subject to a special assessment, as set forth
14 in section 3255 of this title. Entry into such an agreement may occur only after
15 January 1, 2027.

16 (b) Prior to entering into a written agreement, a property owner shall have
17 an analysis performed that includes the following components:

18 (1) where energy or water usage improvements are proposed, an energy
19 analysis by a licensed professional engineer or engineering firm stating that the
20 proposed qualified improvements will either result in more efficient use or

1 conservation of energy or water, the reduction of greenhouse gas emissions, or
2 the addition of renewable sources of energy or water;

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

5 (3) where resilience improvements are proposed, certification by a
6 licensed professional engineer stating that the qualified improvements will
7 result in improved resilience in accordance with local, State, or nationally
8 recognized building standards; or

9 (4) for new construction, certification by a licensed professional
10 engineer or engineering firm stating that the proposed qualified improvements
11 will enable the project to exceed the energy efficiency or water efficiency or
12 renewable energy or water usage requirements of the current building code.

13 (c) A written agreement shall provide that:

14 (1) The length of time allowed for the property owner to repay the
15 assessment shall not exceed the life expectancy of the project. In instances
16 where multiple projects have been installed, the length of time shall not exceed
17 the average lifetime of all projects, weighted by cost.

18 (2) Notwithstanding any other provision of law:

19 (A) A lien under this section:

1 (i) is a first and prior lien on the property, subordinate only to a
2 lien for property taxes, from the date on which the notice of special assessment
3 is recorded until the assessment, interest, or penalty is paid; and

4 (ii) runs with the land, and that portion of the assessment under the
5 assessment contract that is not yet due shall not be accelerated or extinguished
6 by foreclosure of a property tax lien or any other foreclosure.

7 (B) In the event of a foreclosure action, all payments on an
8 assessment under this subchapter that are due and unpaid as of the date the
9 action is filed, and all payments on the assessment that become due after that
10 date and that accrue up to and including the date title to the property is
11 transferred to the mortgage holder, the lien holder, or a third party in the
12 foreclosure action shall be paid in order for title to transfer.

13 (3) A capital provider shall disclose to participating property owners
14 each of the following:

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

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

20 (d) The notice of an agreement shall include at least each of the following:

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

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

2 (3) the date of the agreement;

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

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

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

9 (7) the location at which the original agreement may be examined.

10 (e) Prior to entering into the written assessment contract, the property
11 owner shall obtain and furnish to the municipality a written statement,
12 executed by each holder of a mortgage or deed of trust on the property
13 securing indebtedness, in their sole and absolute discretion, that consents to the
14 assessment and indicates that the assessment does not constitute an event of
15 default under the mortgage or deed of trust.

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

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

1 (1) the assessments to be repaid under the agreement, when calculated
2 as if they were the repayment of a loan, shall not violate 9 V.S.A. §§ 41a, 43,
3 44, and 46–50; and

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

6 (h) For projects under subchapter 2 of this chapter, there shall be no penalty
7 or premium for prepayment of the outstanding balance of an assessment under
8 this subchapter if the balance is prepaid in full. Projects under this subchapter
9 3 are not subject to these provisions, but shall be determined by the private
10 agreement for financing of improvements.

11 (i) Property may be eligible for financing if otherwise qualified
12 improvements were completed and operational not more than 36 months prior
13 to submission of the application to the program. Waivers to the 36-month
14 requirement may be granted in the sole discretion of the program
15 administrator.

16 § 3277. PROGRAM ADMINISTRATORS

17 (a) C-PACE Program Administration.

18 (1) An entity that administers the commercial property-assessed clean
19 energy program or C-PACE Program under this subchapter shall be referred to
20 as a program administrator. A municipality, a public agency, or a private
21 entity may serve as a program administrator. However, a capital provider or

1 lender shall not serve as a program administrator in a municipality where it is
2 also lending.

3 (2) A municipality that has adopted a C-PACE district may:

4 (A) enter into a contract with an entity to serve as the program
5 administrator and to administer the functions of the C-PACE Program for the
6 municipality; or

7 (B) serve as the program administrator itself, to administer the
8 functions of a C-PACE Program, including entering into C-PACE agreements
9 with commercial property owners in its jurisdiction and collecting C-PACE
10 assessments.

11 (b) An entity may:

12 (1) enter into a contract with a C-PACE municipality where the entity
13 shall serve as the program administrator in the municipality; and

14 (2) collect fees necessary to administer the C-PACE program.

15 (c) Other than the fulfillment of its obligations specified in a C-PACE
16 agreement, neither the program administrator nor a municipality has any
17 liability to a commercial property owner for or related to energy savings or
18 resilience improvements financed under a C-PACE Program.

19 (d) The Department of Financial Regulation shall consult with relevant
20 stakeholders, including the Vermont League of Cities and Towns, the Vermont
21 Economic Development Authority, Efficiency Vermont, and agencies from

1 other States with C-PACE programs, in order to identify appropriate entities to
2 serve as program administrators.

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

4 § 3263. COSTS OF OPERATION OF DISTRICT

5 The owners of real property who have entered into written agreements with
6 the municipality under section 3262 of this title shall be obligated to cover the
7 costs of operating the district. A municipality may use other available funds to
8 operate the district. A municipality may charge fees to cover the operation of
9 the C-PACE Program under subchapter 3 of this chapter.

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

11 § 3264. RIGHTS OF PROPERTY OWNERS

12 A property owner who has entered into a written agreement with the
13 municipality under section 3262 or section 3276 of this title may enter into a
14 private agreement for the installation or construction of a project relating to
15 renewable energy, as defined in 30 V.S.A. § 8002(17), or relating to energy
16 efficiency as defined in section 3267 of this title.

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

18 § 3265. LIABILITY OF MUNICIPALITY

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

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

3 (c) A municipality that enters into a written agreement with a property
4 owner under subchapter 3 of this chapter shall not incur any indebtedness or
5 otherwise finance projects under this chapter, nor shall be liable for the failure
6 of the performance of a project, nor pledge the full faith and credit of the
7 municipality.

8 Sec. 5. 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. 6. 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 be exempt from the provisions of this section and, upon receipt of consent
12 from lenders, pursuant to subsection 3276(e) of this title, shall not be
13 subordinate to all liens on the property in existence at the time the lien for the
14 assessment is filed on the land records.

15 Sec. 7. 9 V.S.A. § 46 is amended to read:

16 § 46. EXCEPTIONS

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

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

3 (2) obligations incurred by any person, partnership, association, or other
4 entity to finance in whole or in part income-producing business or activity, but
5 not including obligations incurred to finance family dwellings of four units or
6 fewer when used as a residence by the borrower or to finance real estate that is
7 devoted to agricultural purposes as part of an operating farming unit when used
8 as a residence by the borrower; ~~or~~

9 (3) obligations to finance the purchase, construction, or improvement of
10 property for seasonal or part-time occupancy and not as a place of legal
11 residence; ~~or~~

12 (4) obligations guaranteed or insured by the United States of America or
13 any agency thereof; or

14 (5) obligations incurred for commercial property-assessed clean energy
15 projects pursuant to 24 V.S.A. chapter 87, subchapter 3.

16 Sec. 8. EFFECTIVE DATE

17 This act shall take effect on July 1, 2026.

18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE