

State of Tennessee

PUBLIC CHAPTER NO. 868

SENATE BILL NO. 1990

By Rose, Campbell

Substituted for: House Bill No. 2033

By Freeman, Jernigan

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 205, 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, Section 68-205-106, is amended by deleting the section and substituting:

The terms of a program established 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:

(A) The amount of the assessment, plus existing indebtedness on the property, does not exceed ninety percent (90%) of the fair market value of the property as determined by a qualified appraiser, 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) The amount of the assessment does not exceed twenty-five percent (25%) of the fair market value of the property as determined by a qualified appraiser;

(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; and

(6) A statement explaining the procedures for imposing voluntary special assessments, the billing and collecting of the voluntary special assessments, and remedies for enforcement of delinquent special assessments, unless the local government delegates these duties pursuant to § 68-205-107(d)(2).

SECTION 2. Tennessee Code Annotated, Section 68-205-102, is amended by deleting subdivision (2) and substituting:

(2) "Commercial property" means:

(A) Privately owned commercial, industrial, or agricultural real property;

(B) Privately owned residential real property consisting of five (5) or more dwelling units, including property owned by nonprofit, charitable, or religious organizations; and

(C) Property owned by this state or a local government entity, but leased to a privately owned entity, including:

(i) Industrial development corporations;

(ii) Housing authorities; or

(iii) Health, educational and housing facility boards;

SECTION 3. Tennessee Code Annotated, Section 68-205-102, is amended by deleting subdivision (7) and substituting:

(7) "Program administrator" means the entity designated by a local government to administer a C-PACER program, including:

(A) A department or individual within a local government;

(B) A quasi-governmental organization such as an industrial development corporation, housing authority, or health, educational, and housing facility board;

(C) A capital provider; or

(D) Another private and independent third party designated by the local government;

SECTION 4. Tennessee Code Annotated, Section 68-205-104, is amended by deleting subdivisions (c)-(e) and substituting:

(c) Except as otherwise provided in subsection (g), a local government that establishes a program, or establishes a program through its designee, including the program administrator, 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, delegate administration to the program administrator, or delegate administration to a single, independent, and qualified third party for all C-PACER assessments within 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 program administrator. 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.

SECTION 5. Tennessee Code Annotated, Section 68-205-105, is amended by deleting subdivision (c) and substituting:

(c) A local government or its designee, including the program administrator, 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 must 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 or its designee must be placed into a reserve account and utilized for the local government and 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 or its designee.

SECTION 6. Tennessee Code Annotated, Section 68-205-107, is amended by deleting subdivision (d)(1) and substituting:

(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 incur interest and penalties in the same manner as delinquent property taxes;

(B) In an enforcement or foreclosure action, assessments not yet due must not be accelerated or eliminated by foreclosure, including the foreclosure of a property tax. However, delinquent interest in accordance with the financing agreement must be included in the enforcement or foreclosure action; and

(C) The local government may apply the proceeds of an enforcement action in the same manner as it applies the proceeds from enforcement actions for delinquent property taxes, including the local government's right to apply the proceeds to the payment of the actual costs of the enforcement action as provided in § 67-5-2501;

SECTION 7. Tennessee Code Annotated, Title 68, Chapter 205, is amended by adding the following as a new section:

Notwithstanding this chapter to the contrary, prior to approval of financing on a leasehold owned by this state or a local government, but leased to a privately owned entity as described in § 68-205-102(2)(C), the consent of this state or the local government must be obtained. A change to the leasehold must be approved by this state or the local government, as applicable. This state or a local government must be held harmless if the privately owned entity to which the leasehold is leased defaults on a financing agreement for a leasehold changed in accordance with this section.

SECTION 8. This act takes effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1990

PASSED: March 28, 2022




RANDY McNALLY
SPEAKER OF THE SENATE



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 14th day of April 2022



BILL LEE, GOVERNOR