

COMMERCE AND TRADE (12 PA.C.S.) - PURPOSE, ESTABLISHMENT OF A PROGRAM, NOTICE TO LIEN HOLDER REQUIRED FOR PARTICIPATION, SCOPE OF WORK, LIEN AND COLLECTION OF ASSESSMENTS

Act of Jul. 7, 2022, P.L. 470, No. 43

Cl. 12

Session of 2022

No. 2022-43

SB 635

AN ACT

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, in property assessed clean energy program, further providing for purpose, for definitions, for establishment of a program, for notice to lien holder required for participation, for scope of work, for lien and for collection of assessments.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 4301 of Title 12 of the Pennsylvania Consolidated Statutes is amended to read:
§ 4301. Purpose.

This chapter authorizes the establishment of a property assessed clean energy program in the Commonwealth to ensure that owners of agricultural, commercial and industrial properties can obtain low-cost, long-term financing for energy efficiency, **indoor air quality, resiliency improvement**, water conservation and renewable energy projects.

Section 2. The definitions of "financial institution," "owner financing," "qualified project" and "real property" in section 4302 of Title 12 are amended and the section is amended by adding definitions to read:
§ 4302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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"Financial institution." Any person who in the ordinary course of business extends credit based on a lien, mortgage or security interest in [real] **qualifying commercial** property or an encumbrance of [real] **qualifying commercial** property or relies upon a lien, mortgage or security interest in [real] **qualifying commercial** property or an encumbrance of [real] **qualifying commercial** property to secure a current, contingent or future payment obligation. The term includes, but is not limited to, the following:

(1) A bank, savings association, trust company, credit union or a subsidiary or affiliate of a bank, savings association, trust company or credit union.

(2) A person engaged in the mortgage lending business subject to or exempt from licensing under 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection).

(3) A person subject to or exempt from licensing under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(4) A person registered as a management company or unit investment trust or treated as a business development company

under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) or is excluded from registration under the Investment Company Act of 1940.

(5) An insurance company.

(6) A pension or employee health and welfare fund.

(7) An association engaged in construction or the development or improvement of [real] **qualifying commercial** property.

(8) A condominium or cooperative association or planned community association.

(9) A Federal, State or local agency, authority or an instrumentality of a government entity that is engaged in the financing or supports the financing of real estate development or the purchase or improvement of real estate.

"Indoor air quality project." A project which improves the rated performance of indoor air quality by reducing exposure to indoor airborne contaminants.

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

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"Qualified project." The installation or modification of a permanent improvement fixed to [real] a qualifying commercial property that is a clean energy project, resiliency improvement project, indoor air quality project, water conservation project or alternative energy system[, which generates measurable energy savings or reductions in water usage] and the installation is performed by a qualified party in a district. The term includes installation of alternative energy-generating equipment affixed to the land or building.

"Qualifying commercial property." As follows:

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

(2) The term does not include any residential property, except for a commercial, multifamily rental property or mixed-use property which contains no less than five residential units.

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

"Resiliency improvement." Any fixture, product, system, equipment, device, material or interacting group, thereof intended to increase resilience or improve the durability of qualifying commercial property, needed to withstand natural disasters, including, but not limited to, flood mitigation, wind resistance, energy storage and microgrids, as defined by a local government.

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Section 3. Sections 4303(1)(ii), 4304 introductory paragraph and (1) and 4305 of Title 12 are amended to read:
§ 4303. Establishment of a program.

The following apply:

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

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

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§ 4304. Notice to lien holder required for participation.

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

(1) Any financial institution holding a lien, mortgage or security interest in or other encumbrance of the [real] **qualifying commercial** property that secures a current, future or contingent payment obligation must be given written notice of the [real] **qualifying commercial** property owner's intention to participate in the program and acknowledge in writing to the property owner and municipality or county that established the program that they have received such notice.

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§ 4305. Scope of work.

(a) Requirement.--A program shall require for each proposed [qualified] **clean energy project and water conservation** project a scope of work, energy baseline or water usage baseline and the projected energy savings or water usage reductions in order to establish the viability of the qualified project and the projected energy savings or water usage reductions.

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

Section 4. Section 4307(a)(1), (b) and (c) of Title 12 are amended and the section is amended by adding subsections to read: § 4307. Lien.

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

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

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

(c) Enforcement.--The assessment lien may be enforced by the municipality or county in the same manner that a property tax lien against [real] **qualifying commercial** property may be enforced by the municipality or county to the extent the enforcement is consistent with the laws of this Commonwealth.

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

(g) Restrictions.--Program funds may not be used directly or indirectly to construct, renovate or improve a residential condominium, cooperative unit or any other type of owner-occupied residential unit. A property financed with an assessment that, upon conveyance to a third party, is no longer a qualifying commercial property shall have the assessment immediately

discharged upon conveyance by the payment of the principal amount financed, accrued interest, other charges and any prepayment penalty.

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

The following apply:

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(2) The assessment shall be made only upon the [real] **qualifying commercial** property whose owner has executed a written agreement with the governing body agreeing to the assessment[.] **and the entity providing financing for the qualified project. The entity providing financing for the qualified project may require the property owner to escrow or otherwise provide for the maintenance, repairs and insurance of the qualified project during the term of the assessment. A property owner or subsequent purchaser of a qualifying commercial property with an assessment may prepay the total assessment amount by paying the principal amount financed, accrued interest, fees, charges and any prepayment penalties as specified in the financing agreement and, upon prepayment, the assessment shall be released.**

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

APPROVED--The 7th day of July, A.D. 2022.

TOM WOLF