

SB 0795 by *Rose

(HB 0667) by *Freeman

Real Property - As enacted, enacts the "Commercial Property Assessed Clean Energy and Resilience Act." - Amends TCA Title 67, Chapter 5 and Title 68.

SB0795 has been assigned Public Chapter Number 138 by the Secretary of State.

Summary

FISCAL SUMMARY

NOT SIGNIFICANT

BILL SUMMARY

This bill authorizes local governments to establish and adopt commercial property assessed clean energy and storm resiliency (C-PACER) programs that ensure that free and willing owners of agricultural, commercial, industrial, and multifamily residential properties will be able to obtain low-cost, long-term financing for qualifying improvements. For purposes of this bill, "qualified improvement" means a permanent improvement installed and affixed to commercial property to: decrease energy consumption or demand; support the production of clean, renewable energy; decrease water consumption or demand; allow for reduction or elimination of lead from water used for drinking or cooking; or increase water or wastewater resilience.

ESTABLISHING C-PACER PROGRAM

Under this bill, a local government may establish a C-PACER program and exercise all powers granted under this bill. The local government:

- (1) Must designate a region within its boundaries as an area in which C-PACER activities are eligible. If the region is a county, then the region designated may encompass the whole of the unincorporated and incorporated areas inside the county's boundaries;
- (2) 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 by the assessment provision of this bill are met. Prior to entering the contract, the local government must require each record owner or the owner of an estate for years created pursuant to a written ground

lease agreement or similar agreement to consent to the assessment, which may be executed in the owner's sole and absolute discretion, and acknowledge in writing 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; and

(3) May administer a program, delegate administration pursuant to the application provision of this bill, or delegate the administration to a single, independent, and qualified third party for the region. If the program provides for third-party administration, then the local government official authorized to enter into a written contract with a property owner must 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.

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

- (1) Adopt a resolution of intent. The full text of this bill lists what the resolution must include;
- (2) Hold a hearing for the public to comment on the proposed program; and
- (3) Adopt a resolution establishing the program and its terms.

Subject to the terms of an establishing resolution, a local government may amend a program by resolution. Terms of the program must include:

- (1) Appropriate eligibility factors, including certain certifications as provided in the full text of this bill;
- (2) A requirement that the amount of the assessment plus any existing indebtedness on the property does not: (A) Exceed 90 percent of the fair market value of the property as determined by an appraiser, with the exception that properties qualified under the federal low-income housing tax credit program are exempt from this requirement; and (B) Does not exceed 25 percent of the fair market value of the property as determined by an 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 and execute written contracts on behalf of the local government;
- (5) A statement that the period of 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; and
- (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 in accordance with the application provision of this bill.

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;
- (3) Delegate administration pursuant to the application provision of this bill; and
- (4) Impose fees to offset the actual and reasonable costs of administering a program. This bill requires calculation of service fees as one percent of the total amount financed, not to exceed \$50,000. The full text of this bill provides how the fees will be assessed, calculated, and retained.

APPLICATION

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 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 to cost or risk. The full text of this bill specifies types of evidence that an applicant must provide to establish that a particular type of project does provide a public benefit, all of which must be supported by the findings of an engineer or similar professional.

After an approved project is completed, an applicant must verify that the qualified project was properly completed and is operating as intended. 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.

A local government:

- (1) Must establish a process for reviewing and approving application for financings;
- (2) May require a qualified capital provider to certify that the property owner and the project qualify for financing;
- (3) Must also include in its duties:
 - (A) 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
 - (B) 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; and
- (3) May choose to bill, collect, and enforce the C-PACER assessment and lien, subject to the guidelines provided in the full text of this bill.

FINANCING

The proposed arrangements for financing a qualified project may authorize the property owner to directly purchase the related equipment and materials for the installation or modification of a qualified improvement

or contract directly for such materials.

A local government that authorizes financing through special assessments under this bill must:

- (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 full text of this bill specifies the contents of the notice;
- (2) File and record each C-PACER lien in the real property records of the county in which the property is located. The full text of this bill specifies the contents of the recording; 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.

This bill also provides that:

- (1) The amount of funds allotted through a program must be segregated from the calculation of the undisputed portions necessary for property tax appeals under the present law property tax provisions; and
- (2) Residential property consisting of four or fewer dwelling units does not qualify for financing under the C-PACER program.

The full text of this bill provides what the financing for assessments imposed may include, such as the cost of materials and labor necessary for the installation or modification of qualified improvement and permit fees.

ASSESSMENTS

A local government:

(1) May impose a voluntary special assessment to repay the financing of qualified projects on commercial property located in a region. Such assessment:

(A) May be imposed only after a project application is approved; and

(B) Must be created through a written contract between the local government and the record owner of an estate for years of the property to be assessed and created pursuant to a written ground lease or similar agreement. Prior to entering into the written assessment contract, the property owner must provide a written statement, voluntarily executed by 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; and

(2) May not impose an assessment to repay the financing of the purchase or installation of products or devices not permanently affixed to commercial property.

A special assessment that complies with the requirements discussed in items (1)- (2) immediately above and any interest or penalties on the assessment 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 until the assessment, interest, or penalty is paid and has the same priority status as a lien for any other ad

valorem tax.

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. 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; provided, that the requirements for establishment of the assessment were complied with.

This bill also adds that:

- (1) A 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 bill;
- (2) A combination of local governments may agree to jointly implement or administer a program under this bill;
- (3) A local government that establishes a region for a C-PACER program may not 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 or a qualified project through special assessments under this bill or 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; and
- (4) The state, a county, or local government must not use public funds to fund or repay a loan between a capital provider and property owner. This bill does not pledge, offer, or encumber the full faith and credit of a local government. This bill prohibits a local government from pledging, offering, or encumbering its full faith and credit for a lien amount through a C-PACER program.

ON MARCH 22, 2021, THE SENATE ADOPTED AMENDMENT #1 AND PASSED SENATE BILL 795, AS AMENDED.

AMENDMENT #1 revises various provisions of this bill, as follows:

- (1) Removes this bill's reference to "the owner of an estate for years created pursuant to a written lease of similar agreement," so that the bill applies only to a contract with (and the consent of) the record owner of the property;
- (2) Clarifies that the local government may administer or delegate the administration for all C-PACER assessments in a region;
- (3) Removes the provisions that state that a local government may: hire and set the compensation of a program administrator and program staff; delegate or contract for professional or administrative services necessary to administer the program on a nonexclusive basis; and delegate administration pursuant to the application provision of this bill;
- (4) Specifies, in regard to this bill's requirement that the application certify that the economic benefits exceed the costs of the assessment, that the applicant must "include a certification by a licensed professional engineer or professional firm in the appropriate area of expertise" of such benefits and costs;

- (5) Specifies, in regard to this bill's requirement that after an approved project is completed, an applicant must verify that the qualified project was properly completed and is operating as intended, that such verification be provided by a licensed professional engineer or engineering firm;
- (6) Removes, in regard to financing, the provision for the property owner to contract for the related equipment and materials as an alternative to directly purchasing them; and
- (7) Adds to the present law provisions governing property taxes that when a local government establishes a C-PACER program pursuant to this bill, the collection procedures must comply with the laws governing property taxes and must not otherwise infringe on a taxpayer's right to appeal.