



# House of Representatives

General Assembly

**File No. 735**

February Session, 2016

Substitute House Bill No. 5563

*House of Representatives, April 27, 2016*

The Committee on Energy and Technology reported through REP. REED of the 102nd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE RESIDENTIAL SUSTAINABLE ENERGY PROGRAM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 7-121n of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective January 1, 2017*):

3 (a) As used in this section:

4 (1) ["Energy improvements"] "Qualifying improvements" means any  
5 renovation or retrofitting of qualifying real property to reduce energy  
6 consumption or installation of a [renewable energy] system for clean  
7 energy, as defined in section 16-245n, or customer-side distributed  
8 resources, as defined in section 16-1, permanently fixed to such  
9 qualifying real property to service qualifying real property, [provided  
10 such renovation, retrofit or installation is permanently fixed to such  
11 qualifying real property] including, but not limited to, (A) related  
12 improvements to address water conservation, (B) waste reduction, (C)  
13 health and safety issues, including, but not limited to, asbestos, mold

14 and lead remediation, and (D) resiliency measures, including, but not  
15 limited to, flood-resistant construction and hurricane resistant  
16 construction;

17 (2) ["Qualifying real property"] "Qualifying residential real  
18 property" means a single-family or multifamily residential dwelling  
19 [or a nonresidential building, regardless of ownership, that a  
20 municipality has determined can benefit from energy improvements]  
21 of four or fewer units that meets the qualifications established for the  
22 residential sustainable energy program;

23 (3) "Property owner" means an owner or owners of qualifying  
24 residential real property who [desires] desire to install [energy]  
25 qualifying improvements and [provides] who provide free and willing  
26 consent to the [contractual] benefit assessment against the qualifying  
27 residential real property; [and]

28 [(4) "Sustainable energy program" means a municipal program that  
29 authorizes a municipality to enter into contractual assessments on  
30 qualifying real property with property owners to finance the purchase  
31 and installation of energy improvements to qualifying real property  
32 within its municipal boundaries.]

33 (4) "Residential sustainable energy program" means a program that  
34 facilitates qualifying improvements and utilizes the benefit assessment  
35 authorized by this section as security for the financing of qualifying  
36 improvements;

37 (5) "Municipality" means a municipality, as defined in section 7-369;

38 (6) "Benefit assessment" means the assessment authorized by this  
39 section;

40 (7) "Participating municipality" means a municipality that has  
41 entered into a written agreement, as approved by its chief executive  
42 officer or its legislative body, with the bank pursuant to which the  
43 municipality has agreed to assess, collect, remit and assign benefit  
44 assessments to the bank in return for qualifying improvements for

45 benefited property owners within such municipality and costs  
46 reasonably incurred in performing such duties;

47 (8) "Bank" means the Connecticut Green Bank, established under  
48 section 16-245n; and

49 (9) "Third-party capital provider" means an entity, other than a  
50 bank, that provides financing, leases or power purchase agreements  
51 directly to benefited property owners for qualifying improvements.

52 [(b) Any municipality, that determines it is in the public interest,  
53 may establish a sustainable energy program to facilitate the increase of  
54 energy efficiency and renewable energy. A municipality shall make  
55 such a determination after issuing public notice and providing an  
56 opportunity for public comment regarding the establishment of a  
57 sustainable energy program.]

58 (b) (1) The bank shall establish a residential sustainable energy  
59 program in the state. In furtherance of such program, the bank is  
60 authorized to make appropriations and issue bonds, notes or other  
61 obligations for the purpose of financing (A) qualifying improvements,  
62 (B) related energy audits, and (C) verification reports of the installation  
63 and effectiveness of such improvements. The bank may encourage  
64 third-party capital providers to provide financing directly to benefited  
65 property owners in lieu of or in addition to the bank providing such  
66 financing. The bonds, notes, other obligations or other financing  
67 provided by third-party capital providers may be secured as to both  
68 principal and interest by a (i) pledge of the liens, (ii) such other  
69 collateral, and (iii) revenues to be derived from the residential  
70 sustainable energy program, including revenues from benefit  
71 assessments on qualifying residential real property, as authorized in  
72 this section.

73 (2) When the bank or third-party capital provider has made  
74 appropriations for qualifying improvements for qualifying residential  
75 real property, the participating municipality in which the qualifying  
76 residential real property is located shall, upon notice from the bank or

77 third-party capital, levy a benefit assessment against the qualifying  
78 residential real property benefited by such qualifying improvements.

79 (3) Any such qualifying improvement shall be permanently fixed to  
80 such property but may include (A) the property owners share of  
81 ancillary construction costs to extend the energy infrastructure as  
82 necessary to enable the clean energy or distributed energy  
83 improvement, (B) a third-party ownership arrangement, including, but  
84 not limited to, a power purchase agreement and a lease agreement,  
85 provided the duration of any such third-party ownership agreement is  
86 not less than the lesser of the average estimated useful life of the  
87 principal components or ten years, and (C) subscribership in a shared  
88 clean energy facility, as defined in public act 15-113.

89 [(c)] (4) [Notwithstanding the provisions of section 7-374 or any  
90 other public or special act that limits or imposes] The bank shall  
91 develop program guidelines governing the terms and conditions [on  
92 municipal bond issues, any municipality that establishes a sustainable  
93 energy program under this section may issue bonds, as necessary, for  
94 the purpose of financing (1) energy improvements; (2) related energy  
95 audits; and (3) renewable energy system feasibility studies and the  
96 verification of the installation of such improvements. Such financing  
97 shall be secured by special contractual assessments on the qualifying  
98 real property.] under which funding may be made available to the  
99 residential sustainable energy program, in consultation with  
100 representatives from the banking industry, municipalities and  
101 property owners, and serve as an aggregating entity for the purpose of  
102 securing state and private third-party financing for qualifying  
103 residential real property especially benefited thereby.

104 (5) The bank shall adopt general standards establishing eligible  
105 qualifying improvements, products and measures that satisfy energy  
106 savings, water conservation or other clean energy sustainability or  
107 resiliency goals consistent with the purpose of the residential  
108 sustainable energy program.

109 (6) The bank (A) shall establish, in consultation with the Department

110 of Banking, a loan loss reserve or other credit enhancement program  
111 for qualifying residential real property, and (B) may use the services of  
112 one or more private, public or quasi-public third-party administrators  
113 to administer, provide support or obtain financing for the residential  
114 sustainable energy program.

115 (7) The bank shall adopt consumer protection standards in  
116 consultation with the Department of Banking with which any third-  
117 party capital provider or private, public or quasi-public third-party  
118 administrator shall demonstrate compliance before participating in the  
119 residential sustainable energy program.

120 (8) The bank shall adopt, in consultation with the Department of  
121 Banking, qualifications for third-party capital providers to participate  
122 in the residential sustainable energy program.

123 (9) The residential sustainable energy program shall comply with all  
124 federal directives or guidelines with regard to the property-assessed  
125 clean energy model for residential properties.

126 (10) No loan shall be issued in the state under the residential  
127 sustainable energy program until the Federal Housing Finance Agency  
128 affirmatively states that it will purchase loans to be issued under such  
129 program.

130 [(d) (1) Any municipality that establishes a sustainable energy  
131 program pursuant to this section may partner with another  
132 municipality or a state agency to (A) maximize the opportunities for  
133 accessing public funds and private capital markets for long-term  
134 sustainable financing, and (B) secure state or federal funds available  
135 for this purpose.

136 (2) Any municipality that establishes a sustainable energy program  
137 and issues bonds pursuant to this section may supplement the security  
138 of such bonds with any other legally available funds solely at the  
139 municipality's discretion.

140 (3) Any municipality that establishes a sustainable energy program

141 pursuant to this section may use the services of one or more private,  
142 public or quasi-public third-party administrators to provide support  
143 for the program.]

144 [(e)] (c) Before establishing a program under this section, the  
145 [municipality] bank shall provide notice to the electric distribution  
146 company, as defined in section 16-1, that services the municipality.

147 [(f)] (d) If the property owner [of record of qualifying real property]  
148 requests financing from the bank or a third-party capital provider, for  
149 [energy improvements] qualifying improvements under this section,  
150 the [municipality implementing the sustainable energy program] bank  
151 shall:

152 [(1) Require performance of an energy audit or renewable energy  
153 system feasibility analysis on the qualifying real property before  
154 approving such financing;

155 (2) Enter into a contractual assessment on the qualifying real  
156 property with the property owner in a principal amount sufficient to  
157 pay the costs of energy improvements and any associated costs the  
158 municipality determines will benefit the qualifying real property and  
159 may cover any associated costs;]

160 [(3)] (1) Impose requirements and criteria to ensure that the  
161 proposed [energy] qualifying improvements are consistent with the  
162 purpose of the residential sustainable energy program; and

163 [(4)] (2) Impose requirements and conditions on the financing to  
164 ensure timely repayment, including, but not limited to, underwriting  
165 criteria and procedures for placing a lien on [a] the qualifying  
166 residential real property as security for [which an owner defaults on]  
167 repayment of the benefit assessment.

168 (e) (1) The bank or the third-party capital provider may enter into a  
169 financing agreement with the property owner of qualifying residential  
170 real property. After such agreement is entered into, and upon notice  
171 from the bank, the participating municipality shall (A) place a caveat

172 on the land records indicating that a benefit assessment and a lien are  
173 anticipated upon completion of qualifying improvements for such  
174 property, or (B) at the direction of the bank, levy the benefit  
175 assessment and file a lien on the land records based on the estimated  
176 costs of the qualifying improvements prior to the completion or upon  
177 the completion of such improvements.

178 (2) The bank, or the third-party capital provider, shall disclose to the  
179 property owner the costs and risks associated with participating in the  
180 residential sustainable energy program and the terms and conditions  
181 of the assessment, including, but not limited to, term, payments and  
182 remedies for default and foreclosure. Such costs and risks include, but  
183 are not necessarily limited to, (A) the failure of the property owner to  
184 pay the benefit assessment, (B) the benefit assessment remaining on  
185 the property until satisfied, (C) the potential to impede the sale of the  
186 property, (D) the potential for violation of certain provisions under any  
187 existing indebtedness secured by the benefited property, and (E) the  
188 potential for the assessment to be paid off when such indebtedness is  
189 refinanced or when the property is sold. The bank, or the third-party  
190 capital provider, shall disclose to the property owner entering into a  
191 financing agreement the effective interest rate of the benefit  
192 assessment, including, but not limited to, fees charged by the bank or  
193 the third-party capital provider to administer the program. The bank  
194 or the third-party capital provider shall notify the property owner that  
195 such owner may rescind any financing agreement entered into  
196 pursuant to this section not later than three business days after  
197 entering into such agreement.

198 [(g)] (f) Prior to entering a contractual assessment, the [municipality]  
199 bank or third-party capital provider shall provide each property owner  
200 the following notice, which shall be set forth in at least fourteen-point  
201 bold type: SEEK LEGAL ADVICE BEFORE PARTICIPATING IN THIS  
202 LOAN PROGRAM TO ENSURE UNDERSTANDING OF POTENTIAL  
203 CONSEQUENCES, INCLUDING A POSSIBLE DEFAULT UNDER  
204 YOUR MORTGAGE.

205 [(h)] (g) Any benefit assessment levied pursuant to this section shall  
206 have a term not to exceed the [calculated payback period for] lesser of  
207 (1) the average estimated useful life of the installed [energy] qualifying  
208 improvements, as determined by the [municipality, and shall have no  
209 prepayment penalty. The municipality] bank or a contractor eligible to  
210 install such improvements under the residential sustainable energy  
211 program, or (2) twenty-five years. The bank or the third-party capital  
212 provider shall set a fixed rate of interest for the financing provided or a  
213 fixed payment schedule for leases, power purchase agreements or  
214 other such approved financing structures for the repayment of the  
215 principal assessed amount at the time the benefit assessment is made.  
216 Such interest rate, as may be supplemented with state or federal  
217 funding as may become available, shall be sufficient to pay the  
218 financing costs of the program, including delinquencies.

219 [(i) Assessments] (h) Benefit assessments levied pursuant to this  
220 section and the interest, fees and any penalties thereon shall constitute  
221 a lien against the qualifying residential real property on which they are  
222 made until they are paid. [Such lien] If the agreement for the benefit  
223 assessment provides, the benefit assessment shall be [levied and] paid  
224 in installments and each installment payment shall be collected in the  
225 same manner as the [general] property taxes of the participating  
226 municipality on real property, including, in the event of default or  
227 delinquency, [with respect to] any penalties, fees and remedies. [and  
228 lien priorities, provided such lien shall not have priority over any prior  
229 mortgages.]

230 [(j) The area encompassing the sustainable energy program in a  
231 municipality may be the entire municipal jurisdiction of the  
232 municipality or a subset of such.]

233 (i) Each such lien levied through the residential sustainable energy  
234 program shall be recorded and released in the manner provided for  
235 property tax liens and shall be subordinate to all liens on the  
236 qualifying residential real property in existence at the time the lien for  
237 the assessment is filed on the property. Each such lien levied through

238 the residential sustainable energy program shall be superior to any  
239 other lien on the qualifying residential real property recorded after  
240 such filing except a (1) first mortgage on the property, and (2) lien for  
241 taxes of the municipality on real property. To the extent a benefit  
242 assessment is paid in installments and any such installment is not paid  
243 when due, the benefit assessment lien may be foreclosed, or enforced  
244 by levy and sale of such real property in accordance with chapter 204,  
245 to the extent of any unpaid installment payments and any penalties,  
246 interest and fees related thereto. If such benefit assessment lien is  
247 foreclosed, or enforced by levy and sale of the real property in  
248 accordance with chapter 204, such benefit assessment lien shall survive  
249 the judgment of the foreclosure, or levy and sale, to the extent of any  
250 unpaid installment payments of the benefit assessment secured by  
251 such benefit assessment lien that was not the subject of such judgment,  
252 or levy and sale. The form of collector's deed set forth in section 12-158  
253 shall be used in a levy and sale of real property to satisfy a benefit  
254 assessment lien.

255 (j) A participating municipality shall assign to the bank, or the third-  
256 party capital provider as applicable, any liens filed by the tax collector  
257 pursuant to this section, as provided in the written agreement between  
258 the participating municipality and the bank. The bank or third-party  
259 capital provider may sell or assign, for consideration, any and all liens  
260 received from the participating municipality at its sole discretion. The  
261 assignee or assignees of such liens shall have and possess the same  
262 powers and rights at law or in equity as the participating municipality  
263 and its tax collector would have had if the lien had not been assigned  
264 with regard to the precedence and priority of such lien, the accrual of  
265 interest, and the fees and expenses of collection. The assignee shall  
266 have the same rights to enforce such liens as any private party holding  
267 a lien on real property, including, but not limited to, foreclosure and a  
268 suit on the debt. In accordance with subsection (h) of this section, the  
269 assignee shall also have the right to enforce the lien through the levy  
270 and sale procedure under chapter 204. Costs and reasonable attorneys'  
271 fees incurred by the assignee as a result of any foreclosure action or  
272 other legal proceeding brought pursuant to this section and directly

273 related to the proceeding, including costs and fees incurred in  
 274 enforcement of the lien by the levy and sale under section 12-140 and  
 275 subsection (c) of section 12-157, shall be taxed in any such proceeding  
 276 against each person having title to any property subject to the  
 277 proceedings. Such costs and fees may be collected by the assignee at  
 278 any time after demand for payment has been made by the assignee.

279       Sec. 2. (*Effective January 1, 2017*) On or before July 1, 2017, and  
 280 annually thereafter, the Connecticut Green Bank shall submit a report,  
 281 in accordance with the provisions of section 11-4a of the general  
 282 statutes, to the joint standing committees of the General Assembly  
 283 having cognizance of matters relating to banking and energy and  
 284 technology, summarizing the progress of its residential sustainable  
 285 energy program in the state.

286       Sec. 3. Subdivision (24) of section 36a-485 of the general statutes is  
 287 repealed and the following is substituted in lieu thereof (*Effective from*  
 288 *passage*):

289       (24) "Residential mortgage loan" means any loan primarily for  
 290 personal, family or household use, except financing under a  
 291 sustainable energy program pursuant to section 7-121n, as amended by  
 292 this act, that is secured by a mortgage, deed of trust or other equivalent  
 293 consensual security interest on a dwelling or residential real estate  
 294 upon which is constructed or intended to be constructed a dwelling;

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2017</i>	7-121n
Sec. 2	<i>January 1, 2017</i>	New section
Sec. 3	<i>from passage</i>	36a-485(24)

**ET**           *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Banking Dept.	BF - Potential Revenue Gain	up to \$3,900	up to \$3,900

Note: BF=Banking Fund

**Municipal Impact:** None

**Explanation**

The bill replaces the municipally administered "Sustainable Energy Program" with a similar program administered by the Connecticut Green Bank and allows it to issue bonds. This will not result in a state liability for the bonds because the language specifies that the debt is not the responsibility of the State of Connecticut.

The bill may result in the licensure of up to three third-party capital providers. This would result in potential revenue gain to the Banking Fund of up to \$3,900 annually. A third-party capital provider is required to pay a mortgage lender license fee of \$1,000 and mortgage originator license of \$300 for a total of \$1,300 annually.

In addition, the bill requires the Connecticut Green Bank to consult with the Department of Banking (DOB) on certain provisions. This does not result in a fiscal impact to the DOB as they have the necessary expertise.

Lastly, the bill has no fiscal impact to municipalities, as no municipalities are currently participating in the Sustainable Energy Program.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of licenses.

**OLR Bill Analysis****sHB 5563*****AN ACT CONCERNING THE RESIDENTIAL SUSTAINABLE ENERGY PROGRAM.*****SUMMARY:**

This bill eliminates the municipally administered “Sustainable Energy Program” and replaces it with a similar program administered by the Connecticut Green Bank. (Both programs are commonly known as Property Assessed Clean Energy (PACE) programs.) Under the current municipal PACE program, participating municipalities can issue bonds to provide loans for private property owners to make certain energy improvements (e.g. installing solar panels). The property owners must repay the loans, which are a lien against the property, in the same way they pay their property taxes. In practice, no municipalities have adopted the program.

Similar to the current program, the Green Bank’s program must provide financing for certain energy improvements backed by a lien on the property that must be repaid through a benefit assessment on the property. Unlike the current program, however, the bill’s program (1) provides financing from the Green Bank or other third-party capital providers, rather than the municipality; (2) allows financing for a wider range of improvements; (3) limits financing to residential properties (the Green Bank separately offers a PACE program for commercial properties); and (4) makes the program’s liens subordinate to any liens already on the property when the assessment is filed, but superior to any subsequent liens, except for first mortgages and property tax liens.

The bill authorizes the Green Bank to fund the program and encourage third-party capital providers to also provide financing under it. It requires the bank, in consultation with the Banking

Department, to establish a loan loss reserve or other credit enhancement program for properties eligible for the program's financing. It also requires the bank to establish guidelines and standards for the program and its participants and provide certain notices and disclosures to participating property owners. Financing provided in the program must meet certain conditions established by the bill.

Under the bill, no loans may be issued under the program until the Federal Housing Finance Agency (FHFA) affirmatively states that it will purchase loans to be issued under the program. (It appears that this provision may prevent the program from issuing loans because FHFA does not purchase loans, but instead sets the rules under which Fannie Mae and Freddie Mac purchase mortgages. In addition, Fannie Mae and Freddie Mac would presumably be purchasing mortgages for properties subject to liens issued under the program, not the program's loans.)

Under the bill, once a property owner agrees to finance his or her improvements through the program, a participating municipality must file a lien and levy a benefit assessment on the property. It must assign the lien and assessment to the Green Bank or third-party and remit payments from the assessment to them. The assessment can be enforced through foreclosure or by levy and sale of the property under the property tax law. The bill specifies that loans under the program are not residential mortgage loans regulated under the state law for nondepository financial institutions.

Lastly, the bill requires the Green Bank, beginning by July 1, 2017, to submit an annual progress report about the program to the Banking and Energy and Technology committees.

EFFECTIVE DATE: January 1, 2017, except the provision that exempts the program from the law that regulates residential mortgages is effective upon passage.

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**ELIGIBLE IMPROVEMENTS & PROPERTIES AND PARTICIPATING MUNICIPALITIES**

The bill requires the Green Bank to establish a residential sustainable energy program that facilitates qualifying improvements and uses a benefit assessment as security for financing them. The program must comply with all federal directives or guidelines about the PACE model for residential properties. No loans may be issued under the program until FHFA affirmatively states that it will purchase loans to be issued under the program.

***Qualifying Improvements***

The “qualifying improvements” which the program must support are any (1) renovations or retrofitting to reduce energy consumption or (2) installations of clean energy systems or customer-side distributed resources that are permanently fixed to the property. These can include related improvements that address (1) water conservation; (2) waste reduction; (3) health and safety issues such as asbestos, mold, and lead remediation; and (4) resiliency measures such as flood- and hurricane-resistant construction.

The improvements can also include:

1. the property owner’s share of ancillary construction costs to extend any energy infrastructure the clean or distributed energy improvement needs to operate;
2. third-party ownership arrangements, including power purchase agreements and leases, if their terms run for at least 10 years or the principal components’ average estimated useful life, whichever is shorter; and
3. subscribership in a shared clean energy facility (i.e., a clean energy-powered electricity generating facility to which customers subscribe for either a percentage interest in or a set amount of the total amount of electricity produced).

Under the bill, “clean energy” systems are those that the law allows

the Green Bank to support using the Clean Energy Fund (e.g., solar, wind, fuel cells, certain combined heat and power systems, and thermal storage systems.) “Customer-side distributed resources” are (1) electricity generators that can generate less than 65 megawatts and are located on a retail electricity customer’s premises (e.g., fuel cells, solar photovoltaic systems, or small wind turbines) or (2) certain electric demand reduction measures used by an electric company’s retail end user, such as peak reduction systems and demand response systems.

### ***Qualifying Residential Real Property***

Under the bill, the qualifying improvements must be on “qualifying residential real property,” which is a single-family or multifamily residential dwelling with no more than four units.

### ***Participating Municipalities***

To participate in the program, municipalities must enter into a written agreement with the Green Bank that requires the municipality to assess, collect, remit, and assign the benefit assessments to the bank in return for qualifying improvements for the municipality’s benefitted property owners and the municipality’s costs reasonably incurred in doing so. The agreement must be approved by the municipality’s chief officer or legislative body.

Before establishing the program, the Green Bank must notify the electric distribution company (i.e., Eversource and United Illuminating) that serves the municipality.

## **GREEN BANK POWERS**

To implement the program, the bill authorizes the Green Bank to make appropriations for, and issue bonds, notes, or other obligations to finance, (1) qualifying improvements, (2) related energy audits, and (3) reports that verify the improvements’ installation and effectiveness. The bank can also encourage third-party capital providers to provide financing directly to benefitted property owners instead of, or in addition to, the bank.

The principal and interest of the bonds, notes, other obligations, or third-party financing may be secured by (1) a pledge of the liens, (2) other collateral, and (3) the program's revenue, including revenue from the benefit assessments on qualifying properties.

The Green Bank may also use one or more private, public, or quasi-public third party administrators to administer, provide support, or obtain financing for the program.

### **GUIDELINES AND STANDARDS**

The bill requires the Green Bank to develop program guidelines to govern the terms and conditions for providing funding under the program. In doing so, it must consult with representatives from the banking industry, municipalities, and property owners. The guidelines must also cover how the bank serves as an aggregating entity for securing state and private third-party financing for properties benefitted by the program.

The bank must adopt general standards establishing eligible qualifying improvement products and measures that satisfy energy saving, water conservation, or other clean energy sustainability or resiliency goals consistent with the program's purpose.

In consultation with the Banking Department, the Green Bank must also adopt (1) consumer protection standards that any provider or administrator must comply with before participating in the program and (2) qualifications for third-party capital providers to participate in the program.

### **FINANCING PROCESS**

When a property owner requests financing under the program, the Green Bank must impose (1) requirements and criteria to ensure that the proposed improvements are consistent with the program's purpose and (2) financing conditions to ensure timely repayment, including underwriting criteria and procedures for placing a lien on the property as security for repayment of the benefit assessment. The bank, in consultation with the Banking Department, must establish a loan loss

reserve or other credit enhancement program for the program's financing.

***Notice and Disclosures***

The bill allows the Green Bank or a third-party capital provider to enter into a financing agreement with a qualified property's owner who freely and willingly consents to a contractual assessment against the property (presumably, the "contractual assessment" is the program's benefit assessment). The Green Bank or third-party provider must disclose to the property owner the benefit assessment's terms and conditions, including its term, payments, and remedies for default and foreclosure. They must also disclose the costs and risks related to:

1. the property owner's failure to pay the benefit assessment,
2. the assessment remaining on the property until it is satisfied,
3. the assessment's potential to impede the property's sale,
4. potentially violating certain provisions under any existing indebtedness secured by the property, and
5. the potential for the assessment to be paid off when the indebtedness is refinanced or the property is sold.

The bank or third-party provider must disclose to the property owner entering into a financing agreement the benefit assessment's effective interest rate, including any administrative fees charged by the bank or provider. They must also notify the property owner that the owner may rescind the financing agreement within three business days after entering into it.

Before entering a contractual assessment, the bank or third-party provider must also provide the property owner with a notice with at least 14-point bold type that says: "SEEK LEGAL ADVICE BEFORE PARTICIPATING IN THIS LOAN PROGRAM TO ENSURE UNDERSTANDING OF POTENTIAL CONSEQUENCES,

INCLUDING A POSSIBLE DEFAULT UNDER YOUR MORTGAGE.”

### ***Benefit Assessments***

After the agreement is entered into, and upon notice from the bank, the bill requires the participating municipality to either (1) place a caveat on the land records indicating that a benefit assessment and lien are anticipated on the property once the improvements are completed or (2) at the bank’s direction, levy the benefit assessment and file a lien on the land records based on the improvements’ estimated cost prior to completion or upon their completion. When the bank or third-party provider makes appropriations for improvements, the subject property’s participating municipality must, upon notice from the bank or provider, levy a benefit assessment against the property.

The program’s benefit assessment cannot have a term that exceeds the lesser of (1) the improvements’ average estimated useful life or (2) 25 years. The improvements’ average estimated useful life must be determined by the Green Bank or a contractor who is eligible to install them under the program. The bank or third-party provider must set a fixed interest rate for the financing or a fixed payment schedule for leases, power purchase agreements, or other approved financing structures, to repay the principal assessed when the benefit assessment is made. The interest rate, as supplemented with state or federal funding that may become available, must be sufficient to repay the program’s financing costs, including delinquencies.

### ***Liens***

Under the bill, the program’s benefit assessments, and interest, fees, and penalties on them are a lien on the property until they are paid. If an agreement for an assessment provides for it, the assessment must be paid in installments with each payment collected the same way that the participating municipality collects property taxes, including any penalties, fees, and remedies.

Each lien levied through the program must be recorded and released the same way as property tax liens and must be subordinate

to all liens on the property in existence when the benefit assessment lien is filed. Each lien levied under the program must be superior to any liens recorded after it, except for a first mortgage on the property and municipal property tax liens.

The bill requires a participating municipality to assign to the bank or applicable third-party provider any of the program's liens filed by the tax collector, as provided in the written agreement between the municipality and the Green Bank. The bank or provider may sell or assign their liens at their sole discretion.

### ***Enforcement***

To the extent that the assessment is paid in installments, whenever a payment is late the assessment may be foreclosed or enforced by the property's levy and sale under the property tax law, to the extent of any unpaid installment payments and related penalties, interest, and fees. If the lien is foreclosed or enforced by a levy and sale, it must survive the foreclosure judgment, or levy and sale, to the extent that any unpaid payments were not the subject of the judgment, levy, or sale. The collector's deed used in property tax liens must be used in a levy and sale to satisfy a benefit assessment lien.

Regarding the liens' precedence and priority, interest accrual, fees, and expenses, the bill gives the liens' assignees the same powers and rights at law or in equity that the town and its tax collector would have had if the lien had not been assigned. The assignee has the same rights to enforce the liens as any private party holding a lien on real property, including foreclosure, a suit on the debt, and the levy and sale procedure. The assignee's costs and attorney's fees incurred in a foreclosure or other legal proceeding under the bill, including costs and fees incurred to enforce the lien by levy and sale, must be taxed against the property's owner. The assignee can collect the costs and fees any time after the assignee makes a demand for payment.

## **BACKGROUND**

### ***Legislative History***

On April 12, the House referred the bill (File 415) to the Energy and Technology Committee, which reported a substitute that adds the provision prohibiting the program's loans from being issued until FHFA affirmatively states that it will purchase these loans.

**COMMITTEE ACTION**

Banking Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/15/2016)

Energy and Technology Committee

Joint Favorable Substitute

Yea 20 Nay 1 (04/19/2016)