

Last updated: October 1, 2017

C.G.S.A. § 16a-40g Commercial sustainable energy program

(1) "Energy improvements" means (A) participation in a district heating and cooling system by qualifying commercial real property, (B) participation in a microgrid, as defined in section 16-243y, including any related infrastructure for such microgrid, by qualifying commercial real property, provided such microgrid and any related infrastructure incorporate clean energy, as defined in section 16-245n, (C) any improvement, renovation or retrofitting of qualifying commercial real property to reduce energy consumption or improve energy efficiency, (D) installation of a renewable energy system to service qualifying commercial real property, or (E) installation of a solar thermal or geothermal system to service qualifying commercial real property, provided such renovation, retrofit or installation described in subparagraph (C), (D) or (E) of this subdivision is permanently fixed to such qualifying commercial real property;

(2) "District heating and cooling system" means a local system consisting of a pipeline or network providing hot water, chilled water or steam from one or more sources to multiple buildings;

(3) "Qualifying commercial real property" means any commercial or industrial property, regardless of ownership, that meets the qualifications established for the commercial sustainable energy program;

(4) "Commercial or industrial property" means any real property other than a residential dwelling containing less than five dwelling units;

(5) "Benefited property owner" means an owner of qualifying commercial real property who desires to install energy improvements and provides free and willing consent to the benefit assessment against the qualifying commercial real property;

(6) "Commercial sustainable energy program" means a program that facilitates energy improvements and utilizes the benefit assessments authorized by this section as security for the financing of the energy improvements;

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

(8) "Benefit assessment" means the assessment authorized by this section;

(9) "Participating municipality" means a municipality that has entered into a written agreement, as approved by its legislative body, with the bank pursuant to which the municipality has agreed to assess, collect, remit and assign, benefit assessments to the bank in return for energy improvements for benefited property owners within such municipality and costs reasonably incurred in performing such duties;

(10) "Bank" means the Connecticut Green Bank; and

(11) "Third-party capital provider" means an entity, other than the bank, that provides financing, leases or power purchase agreements directly to benefited property owners for energy improvements.

(b) (1) The bank shall establish a commercial sustainable energy program in the state, and in furtherance thereof, is authorized to make appropriations for and issue bonds, notes or other obligations for the purpose of financing, (A) energy improvements; (B) related energy audits; (C) renewable energy system feasibility studies; and (D) verification reports of the installation and effectiveness of such improvements. The bonds, notes or other obligations shall be issued in accordance with legislation authorizing the bank to issue bonds, notes or other obligations generally. Such bonds, notes or other obligations may be secured as to both principal and interest by a pledge of revenues to be derived from the commercial sustainable energy program, including revenues from benefit assessments on qualifying commercial real property, as authorized in this section.

(2) When the bank has made appropriations for energy improvements for qualifying commercial real property or other costs of the commercial sustainable energy program, including interest costs and other costs related to the issuance of bonds, notes or other obligations to finance the appropriation, the bank may require the participating municipality in which the qualifying commercial real property is located to levy a benefit assessment against the qualifying commercial real property especially benefited thereby.

(3) The bank (A) shall develop program guidelines governing the terms and conditions under which state and third-party financing may be made available to the commercial sustainable energy program, including, in consultation with representatives from the banking industry, municipalities and property owners, developing the parameters for consent by existing mortgage holders and may serve as an aggregating entity for the purpose of securing state or private third-party financing for energy improvements pursuant to this section, (B) shall establish the position of commercial sustainable energy program liaison within the bank, (C) may establish a loan loss reserve or other credit enhancement program for qualifying commercial real property, (D) may use the services of one or more private, public or quasi-public third-party administrators to administer, provide support or obtain financing for the commercial sustainable energy program, (E) shall adopt standards to ensure that the energy cost savings of the energy improvements over the useful life of such improvements exceed the costs of such improvements, and (F) may encourage third-party capital providers to provide financing, leases and power purchase agreements directly to benefited property owners in lieu of or in addition to the bank providing such loans.

(c) Before establishing a commercial sustainable energy program under this section, the bank shall provide notice to the electric distribution company, as defined in section 16-1, that services the participating municipality.

(d) If a benefited property owner requests financing from the bank or a third-party capital provider for energy improvements under this section, the bank shall:

(1) Require performance of an energy audit or renewable energy system feasibility analysis on the qualifying commercial real property that assesses the expected energy cost savings of the energy improvements over the useful life of such improvements before approving such financing;

(2) If financing is approved, either by the bank or the third-party capital provider, require the participating municipality to levy a benefit assessment on the qualifying commercial real property with the property owner in a principal amount sufficient to pay the costs of the energy improvements and any associated costs the bank or the third-party capital provider determines will benefit the qualifying commercial real property;

(3) Impose requirements and criteria to ensure that the proposed energy improvements are consistent with the purpose of the commercial sustainable energy program;

(4) Impose requirements and conditions on the financing to ensure timely repayment, including, but not limited to, procedures for placing a benefit assessment lien on a property as security for the repayment of the benefit assessment; and

(5) Require that the property owner provide written notice, not less than thirty days prior to the recording of any benefit assessment lien securing a benefit assessment for energy improvements for such property, to any existing mortgage holder of such property, of the property owner's intent to finance such energy improvements pursuant to this section.

(e) (1) The bank or the third-party capital provider may enter into a financing agreement with the property owner of qualifying commercial real property. After such agreement is entered into, and upon notice from the bank, the participating municipality shall (A) place a caveat on the land records indicating that a benefit assessment and a benefit assessment lien are anticipated upon completion of energy improvements for such property, or (B) at the direction of the bank, levy the benefit assessment and file a benefit assessment lien on the land records based on the estimated costs of the energy improvements prior to the completion or upon the completion of such improvements.

(2) The bank or the third-party capital provider shall disclose to the property owner the costs and risks associated with participating in the commercial sustainable energy program established by this section, including risks related to the failure of the property owner to pay the benefit assessment. The bank or the third-party capital provider shall disclose to the property owner the effective interest rate of the benefit assessment, including fees charged by the bank or the third-party capital provider to administer the program, and the risks associated with variable interest rate financing. The bank or the third-party capital provider shall notify the property owner that such owner may rescind any financing agreement entered into pursuant to this section not later than three business days after such agreement.

(f) The bank or the third-party capital provider shall set a fixed or variable rate of interest for the repayment of the benefit assessment amount at the time the benefit assessment is made. Such interest rate, as may be supplemented with state or federal funding as may become

available, shall be sufficient to pay the bank's financing and administrative costs of the commercial sustainable energy program, including delinquencies.

(g) Benefit assessments levied and filed pursuant to this section and the interest, fees and any penalties thereon shall constitute a lien against the qualifying commercial real property on which they are made until they are paid. Such benefit assessment lien, shall be paid in installments and each installment payment shall be collected in the same manner as the property taxes of the participating municipality on real property, including, in the event of default or delinquency, with respect to any penalties, fees and remedies. Each such benefit assessment lien may be recorded and released in the manner provided for property tax liens and shall take precedence over all other liens or encumbrances except a lien for taxes of the municipality on real property, which lien for taxes shall have priority over such benefit assessment lien, and provided that the precedence of such benefit assessment lien over any lien held by an existing mortgage holder shall be subject to the written consent of such existing mortgage holder. To the extent any benefit assessment lien installment is not paid when due, the benefit assessment lien may be foreclosed to the extent of any unpaid installment payments due and owing and any penalties, interest and fees related thereto. In the event a benefit assessment lien is foreclosed or a lien for taxes of the municipality on real property is foreclosed or enforced by levy and sale in accordance with chapter 204, the benefit assessment lien shall be extinguished solely with regard to any installments that were due and owing on the date of the judgment of such foreclosure or levy and sale and the benefit assessment lien shall otherwise survive such judgment or levy and sale to the extent of any unpaid installment payments of the benefit assessment secured by such benefit assessment lien that are due after the date of such judgment or levy and sale.

(h) Any participating municipality may assign to the bank any and all benefit assessment liens filed by the participating municipality, as provided in the written agreement between the participating municipality and the bank. The bank may sell or assign, for consideration, any and all benefit assessment liens received from the participating municipality. The consideration received by the bank shall be negotiated between the bank and the assignee. The assignee or assignees of such benefit assessment liens shall have and possess the same powers and rights at law or in equity as the bank and the participating municipality and its tax collector would have had if the benefit assessment lien had not been assigned with regard to the precedence and priority of such benefit assessment lien, the accrual of interest and the fees and expenses of collection. The assignee shall have the same rights to enforce such benefit assessment liens as any private party holding a lien on real property, including, but not limited to, foreclosure and a suit on the debt. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to this section and directly related to the proceeding shall be taxed in any such proceeding against each person having title to any property subject to the proceedings. Such costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.