

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 173

AN ACT

To repeal sections 67.2800 and 67.2815, RSMo, and to enact in lieu thereof seven new sections relating to property assessment contracts for energy efficiency.

---

---

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

Section A. Sections 67.2800 and 67.2815, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 67.2800, 67.2815, 67.2816, 67.2817, 67.2818, 67.2819, and 67.2840, to read as follows:

67.2800. 1. Sections 67.2800 to 67.2835 shall be known and may be cited as the "Property Assessment Clean Energy Act".

2. As used in sections 67.2800 to 67.2835, the following words and terms shall mean:

(1) "Assessment contract", a contract entered into between a clean energy development board and a property owner under which the property owner agrees to pay an annual assessment for a period of up to twenty years not to exceed the weighted average useful life of the qualified improvements in exchange for financing of an energy efficiency improvement or a renewable energy improvement;

(2) "Authority", the state environmental improvement and energy resources authority established under section 260.010;

(3) "Bond", any bond, note, or similar instrument issued by

or on behalf of a clean energy development board;

(4) "Clean energy conduit financing", the financing of energy efficiency improvements or renewable energy improvements for a single parcel of property or a unified development consisting of multiple adjoining parcels of property under section 67.2825;

(5) "Clean energy development board", a board formed by one or more municipalities under section 67.2810, also referred to as the PACE board;

(6) "Director", the director of the division of finance within the department of insurance, financial institutions and professional registration;

(7) "Division", the division of finance within the department of insurance, financial institutions and professional registration;

(8) "Energy efficiency improvement", any acquisition, installation, or modification on or of publicly or privately owned property designed to reduce the energy consumption of such property, including but not limited to:

(a) Insulation in walls, roofs, attics, floors, foundations, and heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective windows and doors, and other window and door improvements designed to reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning distribution system modifications and replacements;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building unless the increase in illumination is necessary to conform to applicable state or local building codes;

(g) Energy recovery systems; and

(h) Daylighting systems;

[(7)] (9) "Municipality", any county, city, or incorporated town or village of this state;

[(8)] (10) "Project", any energy efficiency improvement or renewable energy improvement;

[(9)] (11) "Property assessed clean energy local finance fund", a fund that may be established by the authority for the purpose of making loans to clean energy development boards to establish and maintain property assessed clean energy programs;

[(10)] (12) "Property assessed clean energy program", a program established by a [clean energy development] PACE board to finance energy efficiency improvements or renewable energy improvements under section 67.2820;

[(11)] (13) "Renewable energy improvement", any acquisition and installation of a fixture, product, system, device, or combination thereof on publicly or privately owned property that produces energy from renewable resources, including, but not limited to photovoltaic systems, solar thermal systems, wind systems, biomass systems, or geothermal systems;

3. All projects undertaken under sections 67.2800 to 67.2835 are subject to the applicable municipality's ordinances

and regulations, including but not limited to those ordinances and regulations concerning zoning, subdivision, building, fire safety, and historic or architectural review.

67.2815. 1. A clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project without making a finding that there are sufficient resources to complete the project and that the estimated economic benefit expected from the project during the financing period is equal to or greater than the cost of the project.

2. An assessment contract shall be executed by the clean energy development board and the benefitted property owner or property owners and shall provide:

(1) A description of the project, including the estimated cost of the project and details on how the project will either reduce energy consumption or create energy from renewable sources;

(2) A mechanism for:

(a) Verifying the final costs of the project upon its completion; and

(b) Ensuring that any amounts advanced or otherwise paid by the clean energy development board toward costs of the project will not exceed the final cost of the project;

(3) An acknowledgment by the property owner that the property owner has received or will receive a special benefit by financing a project through the clean energy development board that equals or exceeds the total assessments due under the assessment contract;

(4) An agreement by the property owner to pay annual special assessments for a period not to exceed twenty years, as specified in the assessment contract;

(5) A statement that the obligations set forth in the assessment contract, including the obligation to pay annual special assessments, are a covenant that shall run with the land and be obligations upon future owners of such property; and

(6) An acknowledgment that no subdivision of property subject to the assessment contract shall be valid unless the assessment contract or an amendment thereof divides the total annual special assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

3. The total special assessments levied against a property under an assessment contract shall not exceed the sum of the cost of the project, including any required energy audits and inspections, or portion thereof financed through the participation in a property assessed clean energy program or clean energy conduit financing, including the costs of any audits or inspections required by the clean energy development board, plus such administration fees, interest, and other financing costs reasonably required by the clean energy development board.

4. The clean energy development board shall provide a copy of each signed assessment contract to the local county assessor and county collector or city collector if a city has joined a clean energy development board and the county has not and shall cause a copy of such assessment contract to be recorded in the real estate records of the county recorder of deeds.

5. Special assessments agreed to under an assessment contract shall be a lien on the property against which it is assessed on behalf of the applicable clean energy development board from the date that each annual assessment under the assessment contract becomes due. Such special assessments shall be collected by the county collector or city collector if a city has joined a clean energy development board and the county has not in the same manner and with the same priority as ad valorem real property taxes. Once collected, the county collector or city collector shall pay over such special assessment revenues to the clean energy development board in the same manner in which revenues from ad valorem real property taxes are paid to other taxing districts. Such special assessments shall be collected as provided in this subsection from all subsequent property owners, including the state and all political subdivisions thereof, for the term of the assessment contract.

6. Any clean energy development board that contracts for outside administrative services to provide financing origination for a project shall offer the right of first refusal to enter into such a contract to a federally insured depository institution with a physical presence in Missouri upon the same terms and conditions as would otherwise be approved by the clean energy development board. Such right of first refusal shall not be applicable to the origination of any transaction that involves the issuance of bonds by the clean energy development board.

67.2816. 1. This section shall apply only to a PACE board that implements or that has implemented a program for projects to improve residential properties of four or fewer units.

2. Municipalities that have created or joined a residential PACE program or district shall inform the director by submitting a copy of the enabling ordinance to the division. Any municipality that withdraws from a residential PACE program or district shall inform the director by submitting a copy of the enabling ordinance for the withdrawal to the division.

3. PACE boards offering residential property programs in the state of Missouri shall be subject to examination by the division for compliance with the provisions of this chapter related to the administration of programs for residential properties and particularly compliance with this section and sections 67.2817, 67.2818, and 67.2819. The division shall include in the compliance examination process and procedures any applicable residential requirements and consumer protections established by the federal Bureau of Consumer Financial Protection under Section 307 of the Economic Growth, Regulatory Relief and Consumer Financial Protection Act of 2018.

4. The division shall conduct an examination of each PACE board at least once every twenty-four months and such other times as the director may determine and have all powers granted by chapter 361.

5. The division shall provide the PACE board an opportunity to review each completed examination report and provide written responses to any findings. The written responses, if any, shall be included in a final examination report that shall be delivered to the PACE board and sponsoring municipality. Examination reports shall be made available to the public.

6. After considering the responses to the examination

findings, if the director finds that a PACE board has failed to comply with the provisions of sections 67.2817, 67.2818, or 67.2819, he or she may issue a notice to the PACE board of his or her intent to file a release of the assessment contract and any related assessment lien made in violation of the law setting forth the violations found during the examination. A PACE board shall have thirty days from the date of receipt of an intent to issue a release of assessment contract or lien to file an appeal with the circuit court for the county where the real estate is located. In the event that no appeal is filed, the director shall file said release with the recorder of deeds and shall notify the collector who shall then remove the assessment and any delinquent lien from the county's tax roll and discontinue collection of the assessment.

7. The PACE board and its sponsoring municipality or municipalities shall be jointly and severally responsible for paying the actual costs of examinations, which the director shall assess upon the completion of an examination and be credited to the division of finance fund established under section 361.170 and subject to the provisions thereof.

8. The division may refer any matter related to the conduct of a PACE board to the state auditor or to the attorney general as deemed appropriate by the director. The referral to the attorney general may include a referral under chapter 407.

67.2817. 1. This section shall apply only to residential properties of four or fewer units.

2. Notwithstanding any other contractual agreement to the contrary, each assessment contract shall be reviewed, approved,

and executed by the PACE board and these duties shall not be delegated. Any attempted delegations of these duties shall be void.

3. An assessment contract shall not be approved, executed, submitted, or otherwise presented for recordation unless a PACE board verifies that the following criteria are satisfied:

(1) The PACE assessments are assessed in equal annual installments;

(2) The PACE assessment may be paid in full at any time without prepayment penalty;

(3) The assessment contract shall disclose applicable penalties, interest penalties, or late fees under the contract and describe generally the interest and penalties imposed under chapter 140 relating to the collection of delinquent property taxes. The PACE board shall provide a separate statement to the owner of the residential property of the penalties or late fees authorized under the assessment contract and of the penalties and interest penalties under chapter 140 for the applicable tax collector as of the date of the assessment contract;

(4) The PACE board has confirmed that the property owner is current on property taxes for the project property;

(5) The property that shall be subject to the assessment contract has no recorded and outstanding involuntary liens in excess of one thousand dollars;

(6) The property owner shall not have been a party to any bankruptcy proceedings within the last three years, except that the property owner may have been party to a bankruptcy proceeding that was discharged or dismissed between two and seven years

before the application date;

(7) The term of the assessment contract shall not exceed the weighted average useful life of the qualified improvements to which the greatest portion of funds disbursed under the assessment contract is attributable, not to exceed twenty years. The PACE board shall determine useful life for purposes of this subdivision based upon credible third-party standards or certification criteria that have been established by appropriate government agencies or nationally-recognized standards and testing organizations;

(8) The property owner is current on all mortgage debt on the subject property and has no more than one late payment during the twelve months immediately preceding the application date on any mortgage debt; and

(9) The PACE board shall not enter into an assessment contract or levy or collect a special assessment for a project without making a finding that there are sufficient resources to complete the project and that the estimated economic benefit expected from the project during the financing period is equal to or greater than the cost of the project.

4. The property owner executing the PACE assessment contract shall have a three-day right to cancel the qualifying improvements proposed for financing under the PACE assessment contract. The three-day right shall expire on or before midnight of the third business day after a property owner signs the assessment contract. The PACE board shall be required to provide a printed form that is presented to the property owner no later than the time of signing of the assessment contract detailing the

property owner's right to cancel. An electronic form may be provided if the owner consents electronically to receiving an electronic form.

5. Prior to the execution of an assessment contract, the PACE board shall advise the property owner in writing that any delinquent assessment shall be a lien on the property subject to the assessment contract and that the obligations under the PACE assessment contract continue as an obligation against the improved property if the property owner sells or refinances the property and that a purchaser or lender may require that before the owner may sell or refinance the property that the owner may be required to pay the assessment contract in full.

6. Prior to the execution of an assessment contract, the PACE board shall advise the property owner in writing that if the property owner pays his or her property taxes and special assessments via a lender or loan servicer's escrow program, the special assessment will cause the owner's monthly escrow requirements to increase and increase the owner's total monthly payment to the lender or the loan servicer. The PACE board shall further advise the property owner that if the special assessment results in an escrow shortage that the owner will be required to pay the shortage in a lump-sum payment or catch-up the shortage over twelve months.

7. The PACE board, within three days of entering an assessment contract, shall provide any holder of a first mortgage loan a copy of the assessment contract and a statement that includes a brief description of the project, the cost of the project, the annual assessment that will be levied, and the

number of annual assessments. Transmittal shall be by United States mail to the holder of the first mortgage loan of record.

8. The PACE board shall maintain a public website with current information about the PACE program as the board deems appropriate to inform consumers regarding the PACE program. The website shall list approved contractors for the PACE program. The website shall disclose the process for property owners or their successors to request information about their assessment contract, the status of the assessment contract, and for all questions including contact information to obtain a payoff amount for the release of an assessment contract.

9. The PACE board, its agents, contractor, or other third party shall not make any representation as to the income tax deductibility of an assessment.

67.2818. 1. This section shall apply only to residential properties of four or fewer units.

2. The PACE board shall provide a disclosure form to homeowners that shows the financing terms of the assessment contract including, but not limited to:

(1) The total amount funded and borrowed, including the cost of the installed improvements, the program fees, and capitalized interest, if any;

(2) The annual tax assessment, billing process, and payment due date;

(3) The annual payment amounts;

(4) The term of the assessment;

(5) The fixed rate of interest charged;

(6) The annual percentage rate;

(7) A payment schedule that fully amortizes the amount financed;

(8) The improvements to be installed;

(9) A statement that if the property owner sells or refinances their property that the owner may be required by a mortgage lender or a purchaser to pay off the assessment as a condition of refinancing or sale;

(10) A statement that no penalty shall be assessed or collected for prepayment of the assessment;

(11) That any potential utility savings are not guaranteed, and shall not reduce the assessment payments or total assessment amount;

(12) That the PACE annual assessment shall be collected along with property taxes and that any taxes and annual assessment not paid on or before December thirty-first shall result in a lien on the improved property for the unpaid taxes, unpaid annual assessment, interest, and penalties as provided by law;

(13) That if the owner pays property taxes and insurance through his or her mortgage payment and an escrow account, that the special assessment will cause the owner's monthly escrow requirements to increase and increase the owner's monthly payment to the lender or the loan servicer and that if the special assessment results in an escrow shortage that the owner shall be required to pay the shortage in a lump-sum payment or catch-up the shortage over twelve months;

(14) That failure to timely pay the annual assessment and taxes will result in a tax lien, will result in penalties and

fees being assessed and added to the annual assessment and taxes, and that if the delinquency is not paid, the property could be sold at a tax sale resulting in issuance of a tax certificate or collector's deed to a purchaser that could result in the property owner losing his or her home; and

(15) That the property owner should seek professional tax advice if he or she has questions regarding tax credits related to a PACE project or the tax matters presented by the assessment contract or financing agreement and payments thereunder.

3. The PACE board shall be required to present the disclosure form to a property owner for acknowledgment prior to the execution of an assessment contract.

4. Before a property owner executes an assessment contract, the PACE board shall do the following:

(1) Make an oral confirmation that at least one owner of the property has a copy of the assessment contract documents with all the key terms completed, the financing estimate and disclosure form, and the right to cancel form with a written copy available upon request; and

(2) Make an oral confirmation of the key terms of the assessment contract, in plain language, with the property owner, or to the verified authorized representative of the owner, and shall obtain acknowledgment from the property owner or representative to whom the oral confirmation is given.

5. The oral confirmation shall include, but is not limited to, all the following information:

(1) The property owner has the right to have other persons present, and an inquiry as to whether the property owner would

like to exercise the right to include other individuals. This shall occur immediately after the determination of the preferred language of communication;

(2) The property owner is informed that he or she should review the assessment contract and financing estimate and disclosure form with all other owners of the property;

(3) The qualified improvement being installed is being financed by an assessment contract;

(4) The total estimated annual costs the property owner will have to pay under the assessment contract, including applicable fees;

(5) The total estimated average monthly amount of funds the property owner would have to save in order to pay the annual costs under the assessment contract, including applicable fees;

(6) The term of the assessment contract;

(7) That payments on the assessment contract shall be made through an additional annual assessment on the property and paid either directly to the county tax collector's office as part of the total annual secured property tax bill, or through the property owner's mortgage escrow account, and that if the property owner pays his or her taxes through an escrow account, he or she should notify his or her mortgage lender to discuss adjusting his or her monthly mortgage payment or otherwise providing additional funds to avoid a shortage in the owner's mortgage escrow account;

(8) That the property shall be subject to a lien during the term of the assessment contract for any delinquent assessments;

(9) That before the owner may sell or refinance the

property, a purchaser or lender may require the obligation under the assessment contract to be paid in full;

(10) That any potential utility savings are not guaranteed, and that such savings may not offset the assessment payments or total assessment amount;

(11) That the PACE board, its agents, contractor, or other third party do not provide tax advice, and that the property owner should seek professional tax advice if he or she has questions regarding tax credits related to the project or the tax matters presented by the PACE assessment or assessment contract; and

(12) The date the first payment shall be due.

67.2819. 1. This section shall apply only to residential properties of four or fewer units.

2. The PACE board or its agents shall not permit contractors or other third parties to advertise the availability of residential assessment contracts that are administered by the board, or to solicit property owners on behalf of the board, unless both of the following requirements are met:

(1) The contractor maintains any permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains bond and insurance coverage in minimum amounts determined by the PACE board or higher amounts as required in the jurisdiction where the contractor is licensed or registered; and

(2) The PACE board or its agents obtain the contractor's written agreement that the contractor or third party shall act in accordance with chapter 407 and other applicable advertising and

marketing laws and regulations.

3. The PACE board or its agents shall not provide any direct or indirect cash payment or other thing of material value to a contractor or third party in excess of the actual price charged by that contractor or third party to the property owner for one or more qualified improvements financed by an assessment contract.

4. The PACE board or its agents shall not provide to a contractor engaged in soliciting financing agreements on behalf of the PACE board or its agents any information that discloses the maximum amount of funds for which a property owner may be eligible for qualifying improvements or the amount of equity in a property.

5. The PACE board or its agents shall not reimburse a contractor or third party for expenses for advertising and marketing campaigns that solely benefit the contractor.

6. The PACE board or its agents may reimburse a contractor's bona fide and reasonable training expenses related to PACE financing, provided that:

(1) The training expenses are actually incurred by the contractor; and

(2) The reimbursement is paid directly to the contractor, and is not paid to its sales persons or agents.

7. The PACE board or its agents shall not provide any direct cash payment or other thing of value to a property owner explicitly conditioned upon the property owner entering into an assessment contract. Notwithstanding the provisions of this subsection to the contrary, programs or promotions that offer

reduced fees or interest rates to property owners are not a direct cash payment or other thing of value, provided that the reduced fee or interest rate is reflected in the assessment contract and in no circumstance provided to the property owner as cash consideration.

8. A contractor shall not provide a different price for a project financed under this section than the contractor would provide if paid in cash by the property owner.

67.2840. 1. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective and apply to PACE boards and participating municipalities after January 1, 2020.

2. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective and apply to PACE assessment contracts entered into after January 1, 2020.