

SECOND REGULAR SESSION

# SENATE BILL NO. 577

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3337S.02I

## 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Section A. Sections 67.2800 and 67.2815, RSMo, are repealed and seven  
2 new sections enacted in lieu thereof, to be known as sections 67.2800, 67.2815,  
3 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  
2 as the "Property Assessment Clean Energy Act".

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

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

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

13 (3) "Bond", any bond, note, or similar instrument issued by or on behalf  
14 of a clean energy development board;

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

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

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

21 (6) **"Director", the director of the division of finance within the**  
22 **department of commerce and insurance**;

23 (7) **"Division", the division of finance within the department of**  
24 **commerce and insurance**;

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

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

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

33 (c) Automatic energy control systems;

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

36 (e) Caulking and weatherstripping;

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

41 (g) Energy recovery systems; and

42 (h) Daylighting systems;

43 [(7)] (9) "Municipality", any county, city, or incorporated town or village  
44 of this state;

45 [(8)] (10) "Project", any energy efficiency improvement or renewable  
46 energy improvement;

47 [(9)] (11) "Property assessed clean energy local finance fund", a fund that  
48 may be established by the authority for the purpose of making loans to clean  
49 energy development boards to establish and maintain property assessed clean  
50 energy programs;

51 [(10)] (12) "Property assessed clean energy program", a program  
52 established by a [clean energy development] **PACE** board to finance energy  
53 efficiency improvements or renewable energy improvements under section  
54 67.2820;

55            [(11)] (13) "Renewable energy improvement", any acquisition and  
56 installation of a fixture, product, system, device, or combination thereof on  
57 publicly or privately owned property that produces energy from renewable  
58 resources, including, but not limited to photovoltaic systems, solar thermal  
59 systems, wind systems, biomass systems, or geothermal systems.

60            3. All projects undertaken under sections 67.2800 to 67.2835 are subject  
61 to the applicable municipality's ordinances and regulations, including but not  
62 limited to those ordinances and regulations concerning zoning, subdivision,  
63 building, fire safety, and historic or architectural review.

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

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

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

12            (2) A mechanism for:

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

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

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

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

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

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

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

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

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

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

64 transaction that involves the issuance of bonds by the clean energy development  
65 board.

67.2816. 1. Municipalities that have created or joined a  
2 residential PACE program or district shall inform the director by  
3 submitting a copy of the enabling ordinance to the division. Any  
4 municipality that withdraws from a residential PACE program or  
5 district shall inform the director by submitting a copy of the enabling  
6 ordinance for the withdrawal to the division.

7 2. PACE boards offering residential property programs in the  
8 state of Missouri shall be subject to examination by the division for  
9 compliance with the provisions of sections 67.2800 to 67.2835 related to  
10 the administration of programs for residential properties and  
11 particularly compliance with this section and sections 67.2817, 67.2818,  
12 and 67.2819. The division shall include in the compliance examination  
13 process and procedures any applicable residential requirements and  
14 consumer protections established by the federal Bureau of Consumer  
15 Financial Protection under Section 307 of the Economic Growth,  
16 Regulatory Relief and Consumer Financial Protection Act of 2018.

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

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

26 5. After considering the responses to the examination findings,  
27 if the director finds that a PACE board has failed to comply with the  
28 provisions of sections 67.2817, 67.2818, or 67.2819, he or she may issue  
29 a notice to the PACE board of his or her intent to file a release of the  
30 assessment contract and any related assessment lien made in violation  
31 of the law setting forth the violations found during the examination. A  
32 PACE board shall have thirty days from the date of receipt of an intent  
33 to issue a release of assessment contract or lien to file an appeal with  
34 the circuit court for the county where the real estate is located. In the  
35 event that no appeal is filed, the director shall file said release with the

36 recorder of deeds and shall notify the collector who shall then remove  
37 the assessment and any delinquent lien from the county's tax roll and  
38 discontinue collection of the assessment.

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

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

67.2817. 1. Notwithstanding any other contractual agreement to  
2 the contrary, each assessment contract shall be reviewed, approved,  
3 and executed by the PACE board and these duties shall not be  
4 delegated. Any attempted delegations of these duties shall be void.

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

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

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

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

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

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

25           **(6) The property owner shall not have been a party to any**  
26 **bankruptcy proceedings within the last three years, except that the**  
27 **property owner may have been party to a bankruptcy proceeding that**  
28 **was discharged or dismissed between two and seven years before the**  
29 **application date;**

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

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

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

47           **3. The property owner executing the PACE assessment contract**  
48 **shall have a three-day right to cancel the qualifying improvements**  
49 **proposed for financing under the PACE assessment contract. The**  
50 **three-day right shall expire on or before midnight of the third business**  
51 **day after a property owner signs the assessment contract. The PACE**  
52 **board shall be required to provide a printed form that is presented to**  
53 **the property owner no later than the time of signing of the assessment**  
54 **contract detailing the property owner's right to cancel. An electronic**  
55 **form may be provided if the owner consents electronically to receiving**  
56 **an electronic form.**

57           **4. Prior to the execution of an assessment contract, the PACE**  
58 **board shall advise the property owner in writing that any delinquent**  
59 **assessment shall be a lien on the property subject to the assessment**  
60 **contract and that the obligations under the PACE assessment contract**  
61 **continue as an obligation against the improved property if the property**

62 owner sells or refinances the property and that a purchaser or lender  
63 may require that before the owner may sell or refinance the property  
64 that the owner may be required to pay the assessment contract in full.

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

75 6. The PACE board, within three days of entering an assessment  
76 contract, shall provide any holder of a first mortgage loan a copy of the  
77 assessment contract and a statement that includes a brief description  
78 of the project, the cost of the project, the annual assessment that will  
79 be levied, and the number of annual assessments. Transmittal shall be  
80 by United States mail to the holder of the first mortgage loan of record.

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

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

67.2818. 1. The PACE board shall provide a disclosure form to  
2 homeowners that shows the financing terms of the assessment contract  
3 including, but not limited to:

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



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

9           **(3) The annual payment amounts;**

10          **(4) The term of the assessment;**

11          **(5) The fixed rate of interest charged;**

12          **(6) The annual percentage rate;**

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

14          **(8) The improvements to be installed;**

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

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

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

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

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

35          **(14) That failure to timely pay the annual assessment and taxes**  
36 **will result in a tax lien, will result in penalties and fees being assessed**  
37 **and added to the annual assessment and taxes, and that if the**  
38 **delinquency is not paid, the property could be sold at a tax sale**  
39 **resulting in issuance of a tax certificate or collector's deed to a**  
40 **purchaser that could result in the property owner losing his or her**  
41 **home; and**

42          **(15) That the property owner should seek professional tax advice**  
43 **if he or she has questions regarding tax credits related to a PACE**

44 project or the tax matters presented by the assessment contract or  
45 financing agreement and payments thereunder.

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

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

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

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

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

63           (1) The property owner has the right to have other persons  
64 present, and an inquiry as to whether the property owner would like  
65 to exercise the right to include other individuals. This shall occur  
66 immediately after the determination of the preferred language of  
67 communication;

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

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

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

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

78           (6) The term of the assessment contract;

79           (7) That payments on the assessment contract shall be made  
80 through an additional annual assessment on the property and paid

81 either directly to the county tax collector's office as part of the total  
82 annual secured property tax bill, or through the property owner's  
83 mortgage escrow account, and that if the property owner pays his or  
84 her taxes through an escrow account, he or she should notify his or her  
85 mortgage lender to discuss adjusting his or her monthly mortgage  
86 payment or otherwise providing additional funds to avoid a shortage  
87 in the owner's mortgage escrow account;

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

90 (9) That before the owner may sell or refinance the property, a  
91 purchaser or lender may require the obligation under the assessment  
92 contract to be paid in full;

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

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

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

67.2819. 1. The PACE board or its agents shall not permit  
2 contractors or other third parties to advertise the availability of  
3 residential assessment contracts that are administered by the board, or  
4 to solicit property owners on behalf of the board, unless both of the  
5 following requirements are met:

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

12 (2) The PACE board or its agents obtain the contractor's written  
13 agreement that the contractor or third party shall act in accordance  
14 with chapter 407 and other applicable advertising and marketing laws  
15 and regulations.

16 2. The PACE board or its agents shall not provide any direct or

17 indirect cash payment or other thing of material value to a contractor  
18 or third party in excess of the actual price charged by that contractor  
19 or third party to the property owner for one or more qualified  
20 improvements financed by an assessment contract.

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

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

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

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

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

36 6. The PACE board or its agents shall not provide any direct cash  
37 payment or other thing of value to a property owner explicitly  
38 conditioned upon the property owner entering into an assessment  
39 contract. Notwithstanding the provisions of this subsection to the  
40 contrary, programs or promotions that offer reduced fees or interest  
41 rates to property owners are not a direct cash payment or other thing  
42 of value, provided that the reduced fee or interest rate is reflected in  
43 the assessment contract and in no circumstance provided to the  
44 property owner as cash consideration.

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

67.2840. 1. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be  
2 effective and apply to PACE boards and participating municipalities  
3 after January 1, 2021.

4 2. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective  
5 and apply to PACE assessment contracts entered into after January 1,  
6 2021.

7           **3. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall only apply**  
8 **to PACE programs for projects to improve residential properties of four**  
9 **or fewer units.**

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