

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 697

AN ACT

To repeal sections 67.2800, 67.2810, and 67.2815, RSMo, and to enact in lieu thereof eight 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Section A. Sections 67.2800, 67.2810, and 67.2815, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 67.2800, 67.2810, 67.2815, 67.2816, 67.2817, 67.2818, 67.2819, and 67.2840, to read as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] 67.2840 shall be known and may be cited as the "Property Assessment Clean Energy Act".

2. As used in sections 67.2800 to [67.2835] 67.2840, 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;

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

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

(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) "Program administrator", an individual or entity selected by the clean energy development board to administer the PACE program, but this term does not include an employee of a county or municipal government assigned to a clean energy development board or a public employee employed by a clean energy development board who is paid from appropriated general tax revenues;

(11) "Project", any energy efficiency improvement or renewable energy improvement;

[(9)] (12) "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)] (13) "Property assessed clean energy program" or "PACE program", a program established by a clean energy development board to finance energy efficiency improvements or renewable energy improvements under section 67.2820;

[(11)] (14) "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)] 67.2840 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.

67.2810. 1. One or more municipalities may form clean energy development boards for the purpose of exercising the powers described in sections 67.2800 to ~~67.2835~~ 67.2840. Each clean energy development board shall consist of not less than three members, as set forth in the ordinance or order establishing the clean energy development board. Members shall serve terms as set forth in the ordinance or order establishing the clean energy development board and shall be appointed:

(1) If only one municipality is participating in the clean energy development board, by the chief elected officer of the municipality with the consent of the governing body of the municipality; or

(2) If more than one municipality is participating, in a manner agreed to by all participating municipalities.

2. A clean energy development board shall be a political subdivision of the state and shall have all powers necessary and convenient to carry out and effectuate the provisions of sections 67.2800 to ~~67.2835~~ 67.2840, including but not limited to the following:

(1) To adopt, amend, and repeal bylaws, which are not inconsistent with sections 67.2800 to ~~67.2835~~ 67.2840;

(2) To adopt an official seal;

(3) To sue and be sued;

(4) To make and enter into contracts and other instruments with public and private entities;

(5) To accept grants, guarantees, and donations of property, labor, services, and other things of value from any public or private source;

(6) To employ or contract for such managerial, legal, technical, clerical, accounting, or other assistance it deems advisable;

(7) To levy and collect special assessments under an assessment contract with a property owner and to record such special assessments as a lien on the property;

(8) To borrow money from any public or private source and issue bonds and provide security for the repayment of the same;

(9) To finance a project under an assessment contract;

(10) To collect reasonable fees and charges in connection with making and servicing assessment contracts and in connection with any technical, consultative, or project assistance services offered;

(11) To invest any funds not required for immediate disbursement in obligations of the state of Missouri or of the United States or any agency or instrumentality thereof, or in bank certificates of deposit; provided, however, the limitations on investments provided in this subdivision shall not apply to proceeds acquired from the sale of bonds which are held by a corporate trustee; and

(12) To take whatever actions necessary to participate in and administer a clean energy conduit financing or a property assessed clean energy program.

3. No later than July first of each year, the clean energy development board shall file with each municipality that participated in the formation of the clean energy development board and with the director of the department of natural resources an annual report for the preceding calendar year that includes:

(1) A brief description of each project financed by the clean energy development board during the preceding calendar year, which shall include the physical address of the property, the name or names of the property owner, an itemized list of the costs of the project, and the name of any contractors used to complete the project;

(2) The amount of assessments due and the amount collected during the preceding calendar year;

(3) The amount of clean energy development board administrative costs incurred during the preceding calendar year;

(4) The estimated cumulative energy savings resulting from all energy efficiency improvements financed during the preceding calendar year; and

(5) The estimated cumulative energy produced by all renewable energy improvements financed during the preceding calendar year.

4. No lawsuit to set aside the formation of a clean energy development board or to otherwise question the proceedings related thereto shall be brought after the expiration of sixty days from the effective date of the ordinance or order creating the clean energy development board. No lawsuit to set aside the approval of a project, an assessment contract, or a special assessment levied by a clean energy development board, or to otherwise question the proceedings related thereto shall be brought after the expiration of sixty days from the date that the assessment contract is executed.

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 for the county, or city not within a county, and shall cause a copy of such assessment contract to be recorded in the real estate records of the [county] recorder of deeds for the county, or city not within a county.

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 for the county, or city not within a county, in the same manner and with the same priority as ad valorem real property taxes, subject to the provisions of subsection 8 of this section. Once collected, the [county] collector for the county, or city not within a county, 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.

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

Notwithstanding any provision of law to the contrary, any clean energy development board formed to improve commercial properties, properties owned by non-profit or not-for-profit entities, governmental properties, or non-residential properties in excess of four residential units shall be exempt from the provisions of sections 67.2816, 67.2817, 67.2818, and 67.2819, nor shall such sections apply to the commercial PACE programs and commercial PACE assessment contracts of any clean energy development board engaged in both commercial and residential property programs.

Notwithstanding any provision of law to the contrary, any clean energy development board that ceases to finance new projects to improve residential properties of four or fewer units before January 1, 2022, shall be exempt from the provisions of sections 67.2816, 67.2817, 67.2818, and 67.2819.

8. After January 1, 2022, a residential property assessment contract shall not be approved by the clean energy development board, or otherwise presented for recordation, unless the clean energy development board verifies that written consent to the residential property assessment contract has been obtained from every existing

lien holder on the property if the amount of the contract is more than ten percent of the market value of the property. No lien holder shall be required or compelled to compromise their security interest by providing consent and may refuse to consent to the residential property assessment contract becoming effective. Such consent shall be attached to the assessment contract that is filed with the recorder of deeds office. A residential property assessment contract that is only for heating, ventilating, or air conditioning distribution system modifications and replacements shall not require consent.

67.2816. 1. 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.

2. Clean energy development boards offering residential property programs in the state of Missouri and their program administrator shall be subject to examination by the division for compliance with the provisions of sections 67.2800 to 67.2840 related to the administration of programs for residential properties.

3. The division shall conduct an examination of each clean energy development board at least once every twenty-four months. The functions, powers, and duties of the director shall include the authority to adopt, promulgate, amend, and repeal rules necessary and proper for the administration of the director's duties under sections 67.2800 to 67.2840, subject to the requirements of sections 361.105 and 536.024.

4. The division shall provide each completed examination of a clean energy development board to the municipality that has joined a residential PACE program operated by such board or district in which such board operates.

5. The clean energy development board and its program administrator or other agents shall be jointly and severally responsible for paying the actual costs of examinations, not to exceed five thousand dollars, 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.

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

2. An assessment contract shall not be approved, executed, submitted, or otherwise presented for recordation unless a clean energy development 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. The pay-off letter shall specify the amount of any fee or charge by a lender or loan service agent to obtain the total balance due. The release of the assessment shall be recorded within thirty days of the receipt of the amounts identified in the pay-off letter;

(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;

(4) The clean energy development 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;

(5) The clean energy development board has confirmed that the property owner is current on property taxes for the project property;

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

(7) The property owner shall not currently be a party to any bankruptcy proceeding where any existing lien holder of the property is named as a creditor;

(8) 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 clean energy development 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;

(9) 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

(10) The 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.

3. Any assessment contract for a project that costs between eighty percent and ninety seven percent of the fair market value of the benefitted property prior to the project shall include provision of an insurance policy providing coverage for any remaining cost of fulfilling the assessment contract, including any accumulated interest, in the event the property is foreclosed upon. Such insurance policy shall run with the land in the same manner as the other obligations set forth in the assessment contract.

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 to cancel shall expire at midnight of the third business day after a property owner signs the assessment contract. The clean energy development 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 clean energy development 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 clean energy development 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 clean energy development 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 clean energy development 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 clean energy development 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 the assessment contract, the status of the assessment contract, and for all questions including contract information to obtain a payoff amount for the release of an assessment contract.

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

10. The primary existing lien holder for a property shall have three business days to deny an assessment contract.

67.2818. 1. Any requirements and consumer protections established by federal law and regulations, and any amendments thereto, applicable to property assessed clean energy financing, shall apply to residential assessment contracts made pursuant to sections 67.2800 to 67.2840. Additionally, the clean energy development board shall consider the financial ability of the property owner to repay the assessment contract.

2. The clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project if the cash price of the residential project is more than twenty percent of the market value in money of the property as determined by reference to the county assessment records for tax purposes for the most recent completed assessment by the county assessor.

3. The clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project if the PACE assessment contract combined with any existing and outstanding indebtedness secured by the property exceeds ninety-seven percent of the current market value of the property as determined by reference to the county assessment records for tax purposes for the most recent completed assessment by the county assessor.

4. The clean energy development 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 the 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 and the specific amount of any fee or charge by a lender or loan servicing agent to obtain the total balance due in a pay-off letter and the recording of a release of the assessment which shall be recorded within thirty days of the receipt of the amount identified in the pay-off letter;

(11) 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;

(12) 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;

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

(14) 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.

5. The clean energy development board shall be required to present the disclosure form to a property owner for acknowledgment prior to the execution of an assessment contract.

6. Before a property owner executes an assessment contract, the clean energy development board shall do the following:

(1) Make a verbal 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 a verbal 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 verbal confirmation is given.

7. The verbal 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 inquiry 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 the clean energy development board, its agents contractor, or other third party does 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

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

67.2819. 1. The clean energy development 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 clean energy development board or higher amounts as required in the jurisdiction where the contractor is licensed or registered; and

(2) The clean energy development 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.

2. The clean energy development 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.

3. The clean energy development board or its agents shall not provide to a contractor engaged in soliciting financing agreements on behalf of the clean energy development 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.

4. The clean energy development board or its agents shall not reimburse a contractor or third party for expenses for advertising and marketing campaigns that solely benefit the contractor.

5. The clean energy development 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 salespersons or agents.

6. The clean energy development 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. 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 the residential PACE programs of clean energy development boards and participating municipalities after January 1, 2022.

2. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective and apply to residential PACE assessment contracts entered into after January 1, 2022.