

SECOND REGULAR SESSION

# HOUSE BILL NO. 2178

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HOLSMAN (Sponsor), SCHUPP, LeBLANC, ROORDA,  
ATKINS, OXFORD, LAMPE, KANDER, WALTON GRAY, PACE, CHAPPELLE-NADAL,  
ENGLUND AND CALLOWAY (Co-sponsors).

4804L.01I

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 260.035 and 260.080, RSMo, and to enact in lieu thereof eleven new sections relating to financing by municipalities for energy improvements.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 260.035 and 260.080, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 67.2800, 67.2805, 67.2810, 67.2815, 67.2820, 67.2825, 67.2830, 67.2835, 260.035, 260.036, and 260.080, 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 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 other 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**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 14 unified development consisting of multiple adjoining parcels of property under section 67.2825;
- 15 (5) "Clean energy development board", a board formed by one or more
- 16 municipalities under section 67.2810;
- 17 (6) "Director", the director of the department of economic development;
- 18 (7) "Energy efficiency improvement", any acquisition, installation, or modification
- 19 on or of publicly or privately owned property designed to reduce the energy consumption
- 20 of such property, including but not limited to:
- 21 (a) Insulation in walls, roofs, attics, floors, foundations, and heating and cooling
- 22 distribution systems;
- 23 (b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or
- 24 heat-reflective windows and doors, and other window and door improvements designed
- 25 to reduce energy consumption;
- 26 (c) Automatic energy control systems;
- 27 (d) Heating, ventilating, or air conditioning distribution system modifications and
- 28 replacements;
- 29 (e) Caulking and weatherstripping;
- 30 (f) Replacement or modification of lighting fixtures to increase energy efficiency
- 31 of the lighting system without increasing the overall illumination of the building unless the
- 32 increase in illumination is necessary to conform to applicable state or local building codes;
- 33 (g) Energy recovery systems; and
- 34 (h) Daylighting systems;
- 35 (8) "Municipality", any county, city, or incorporated town or village of this state;
- 36 (9) "Project", any energy efficiency improvement or renewable energy
- 37 improvement;
- 38 (10) "Property assessed clean energy local finance fund", the fund established by
- 39 the authority under section 260.036 for the purpose of making loans to clean energy
- 40 development boards to establish and maintain property assessed clean energy programs;
- 41 (11) "Property assessed clean energy program", a program established by a clean
- 42 energy development board to finance energy efficiency improvements or renewable energy
- 43 improvements under section 67.2820;
- 44 (12) "Renewable energy improvement", any acquisition and installation of a
- 45 fixture, product, system, device, or combination thereof on publicly or privately owned
- 46 property that produces energy from renewable resources, including, but not limited to
- 47 photovoltaic systems, solar thermal systems, wind systems, biomass systems, or geothermal
- 48 systems.

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

**67.2805. 1. The authority may, as needed, promulgate administrative rules and**  
2 **regulations relating to the following:**

3           **(1) Guidelines and specifications for administering the property assessed clean**  
4 **energy local finance fund;**

5           **(2) The form of the annual report required by subsection 3 of section 67.2810; and**

6           **(3) Any clarification to the definitions of energy efficiency improvement and**  
7 **renewable energy improvement as the authority may determine is necessary or advisable.**

8           **2. Any rule or portion of a rule, as that term is defined in section 536.010, that is**  
9 **created under the authority delegated in this section shall become effective only if it**  
10 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
11 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**  
12 **vested with the general assembly under chapter 536 to review, to delay the effective date,**  
13 **or to disapprove and annul a rule are subsequently held unconstitutional, then the grant**  
14 **of rulemaking authority and any rule proposed or adopted after August 28, 2010, shall be**  
15 **invalid and void.**

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

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

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

12           **2. A clean energy development board shall be a separate body politic and corporate**  
13 **and shall have all powers necessary and convenient to carry out and effectuate the**  
14 **provisions of sections 67.2800 to 68.2835, including, but not limited to the following:**

15           **(1) To adopt, amend, and repeal bylaws, which are not inconsistent with sections**  
16 **67.2800 to 68.2835;**

17           **(2) To adopt an official seal;**

- 18           (3) To sue and be sued;
- 19           (4) To make and enter into contracts and other instruments with public and private  
20 entities;
- 21           (5) To accept grants, guarantees, and donations of property, labor, services, and  
22 other things of value from any public or private source;
- 23           (6) To employ or contract for such managerial, legal, technical, clerical, accounting,  
24 or other assistance it deems advisable;
- 25           (7) To levy and collect special assessments under an assessment contract with a  
26 property owner and to record such special assessments as a lien on the property;
- 27           (8) To borrow money from any public or private source and issue bonds and  
28 provide security for the repayment of the same;
- 29           (9) To finance a project under an assessment contract;
- 30           (10) To collect reasonable fees and charges in connection with making and servicing  
31 assessment contracts and in connection with any technical, consultative, or project  
32 assistance services offered;
- 33           (11) To invest any funds not required for immediate disbursement in obligations  
34 of the state of Missouri or of the United States or any agency or instrumentality thereof,  
35 or in bank certificates of deposit; provided, however, the limitations on investments  
36 provided in this subdivision shall not apply to proceeds acquired from the sale of bonds  
37 which are held by a corporate trustee; and
- 38           (12) To take whatever actions necessary to participate in and administer a clean  
39 energy conduit financing or a property assessed clean energy program.
- 40           3. No later than July first of each year, the clean energy development board shall  
41 file with the authority and with each municipality that participated in the formation of the  
42 clean energy development board, an annual report for the preceding calendar year that  
43 includes:
- 44           (1) A brief description of each project financed by the clean energy development  
45 board during the preceding calendar year;
- 46           (2) The amount of assessments due and the amount collected during such year;
- 47           (3) The amount of clean energy development board administrative costs incurred;
- 48           (4) The estimated cumulative energy savings resulting from all energy efficiency  
49 improvements financed during the year and to date;
- 50           (5) The estimated cumulative energy produced by all renewable energy  
51 improvements financed during the year and to date; and
- 52           (6) Any other financial information required by the authority's rules and  
53 regulations.

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

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

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

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

11          **(2) A mechanism for:**

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

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

15          **(3) An acknowledgment by the property owner that the property owner has**  
16 **received a special benefit by financing a project through the clean energy development**  
17 **board and an agreement by such property owner to pay an annual special assessment equal**  
18 **to the amount of total special assessments permitted by this section, amortized over a**  
19 **period not to exceed twenty years;**

20          **(4) A distribution of assessment amounts among all parcels of real property subject**  
21 **to the assessment contract;**

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

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

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

36           **4. Upon execution of an assessment contract, the clean energy development board**  
37 **shall provide a copy of such assessment contract to the local county assessor and county**  
38 **collector and cause a copy of such assessment contract to be recorded in the files of the**  
39 **county recorder of deeds.**

40           **5. Special assessments agreed to under an assessment contract shall be a lien on the**  
41 **property against which it is assessed on behalf of the applicable clean energy development**  
42 **board from the date that each annual assessment under the assessment contract becomes**  
43 **due. Such special assessments shall be collected by the county collector in the same manner**  
44 **and with the same priority as other ad valorem real property taxes. Once collected, the**  
45 **county collector shall pay over such special assessment revenues to the clean energy**  
46 **development board in the same manner in which revenues from ad valorem real property**  
47 **taxes are paid to other taxing districts. Such special assessments shall be collected as**  
48 **provided in this subsection from all subsequent property owners, including the state and**  
49 **all political subdivisions thereof, for the term of the assessment contract.**

**67.2820. 1. Any clean energy development board may establish a property assessed**  
2 **clean energy program to finance energy efficiency improvements or renewable energy**  
3 **improvements. A property assessed clean energy program shall consist of a program**  
4 **whereby a property owner may apply to a clean energy development board to finance the**  
5 **costs of a project through annual special assessments levied under an assessment contract.**

6           **2. A clean energy development board may establish application requirements and**  
7 **criteria for project financing approval as it deems necessary to effectively administer such**  
8 **program and ration available funding among projects, including but not limited to**  
9 **requiring projects to meet certain energy efficiency standards.**

10           **3. A clean energy development board may require an initial energy audit as a**  
11 **prerequisite to project financing through a property assessed clean energy program as well**  
12 **as inspections to verify project completion.**

**67.2825. 1. In lieu of financing a project through a property assessed clean energy**  
2 **program, a clean energy development board may seek to finance any number of projects**  
3 **to be installed within a single parcel of property or within a unified development consisting**

4 of multiple adjoining parcels of property by participating in a clean energy conduit  
5 financing.

6       2. A clean energy conduit financing shall consist of the issuance of bonds under  
7 section 67.2830 payable from the special assessment revenues collected under an  
8 assessment contract with the property owner participating in the clean energy conduit  
9 financing and any other revenues pledged thereto.

67.2830. 1. A clean energy development board may issue bonds payable from  
2 special assessment revenues generated by assessment contracts and any other revenues  
3 pledged thereto. The bonds shall be authorized by resolution of the clean energy  
4 development board, shall bear such date or dates, and shall mature at such time or times  
5 as the resolution shall specify, provided that the term of any bonds issued for a clean  
6 energy conduit financing shall not exceed twenty years. The bonds shall be in such  
7 denomination, bear interest at such rate, be in such form, be issued in such manner, be  
8 payable in such place or places, and be subject to redemption as such resolution may  
9 provide. Notwithstanding anything to the contrary under this section, issuance of the  
10 bonds shall conform to the requirements of subsection 1 of section 108.170.

11       2. Any bonds issued under this section shall not constitute an indebtedness of the  
12 state or any municipality. Neither the state nor any municipality shall be liable on such  
13 bonds, and the form of such bonds shall contain a statement to such effect.

67.2835. The director of the department of economic development is authorized to  
2 allocate the state's residual share, or any portion thereof, of the national qualified energy  
3 conservation bond limitation under Section 54D of the Internal Revenue Code of 1986, as  
4 amended, for any purposes described therein to the authority, any clean energy  
5 development board, the state, any political subdivision, instrumentality, or other body  
6 corporate and politic.

260.035. 1. The authority is hereby granted and may exercise all powers necessary or  
2 appropriate to carry out and effectuate its purposes pursuant to the provisions of sections 260.005  
3 to 260.125, including, but not limited to, the following:

4       (1) To adopt bylaws and rules after having held public hearings thereon for the regulation  
5 of its affairs and the conduct of its business;

6       (2) To adopt an official seal;

7       (3) To maintain a principal office and such other offices within the state as it may  
8 designate;

9       (4) To sue and be sued;

10       (5) To make and execute leases, contracts, releases, compromises and other instruments  
11 necessary or convenient for the exercise of its powers or to carry out its purposes;

12           (6) To acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair,  
13 operate, lease, finance and sell equipment, structures, systems and projects and to lease the same  
14 to any private person, firm, or corporation, or to any public body, political subdivision or  
15 municipal corporation. Any such lease may provide for the construction of the project by the  
16 lessee;

17           (7) To issue bonds and notes as hereinafter provided and to make, purchase, or  
18 participate in the purchase of loans or municipal obligations and to guarantee loans to finance  
19 the acquisition, construction, reconstruction, enlargement, improvement, furnishing, equipping,  
20 maintaining, repairing, operating or leasing of a project **or to fund the property assessed clean**  
21 **energy local finance fund established under section 260.036;**

22           (8) To invest any funds not required for immediate disbursement in obligations of the  
23 state of Missouri or of the United States or any agency or instrumentality thereof, or in bank  
24 certificates of deposit; provided, however, the foregoing limitations on investments shall not  
25 apply to proceeds acquired from the sale of bonds or notes which are held by a corporate trustee  
26 pursuant to section 260.060;

27           (9) To acquire by gift or purchase, hold and dispose of real and personal property in the  
28 exercise of its powers and the performance of its duties hereunder;

29           (10) To employ managers and other employees and retain or contract with architects,  
30 engineers, accountants, financial consultants, attorneys and such other persons, firms or  
31 corporations who are necessary in its judgment to carry out its duties, and to fix the  
32 compensation thereof;

33           (11) To receive and accept appropriations, bequests, gifts and grants and to utilize or  
34 dispose of the same to carry out its purposes pursuant to the provisions of sections 260.005 to  
35 260.125;

36           (12) To engage in research and development with respect to pollution control facilities  
37 and solid waste or sewage disposal facilities, and water facilities, resource recovery facilities and  
38 the development of energy resources;

39           (13) To collect rentals, fees and other charges in connection with its services or for the  
40 use of any project hereunder;

41           (14) To sell at private sale any of its property or projects to any private person, firm or  
42 corporation, or to any public body, political subdivision or municipal corporation on such terms  
43 as it deems advisable, including the right to receive for such sale the note or notes of any such  
44 person to whom the sale is made. Any such sale shall provide for payments adequate to pay the  
45 principal of and interest and premiums, if any, on the bonds or notes issued to finance such  
46 project or portion thereof. Any such sale may provide for the construction of the project by the  
47 purchaser of the project;



48           (15) To make, purchase or participate in the purchase of loans to finance the  
49 development and marketing of:

50           (a) Means of energy production utilizing energy sources other than fossil or nuclear fuel,  
51 including, but not limited to, wind, water, solar, biomass, solid waste, and other renewable  
52 energy resource technologies;

53           (b) Fossil fuels and recycled fossil fuels which are indigenous energy resources produced  
54 in the state of Missouri, including coal, heavy oil, and tar sands; [and]

55           (c) Synthetic fuels produced in the state of Missouri; **and**

56           **(d) Property assessed clean energy programs established by clean energy**  
57 **development boards under section 67.2820, provided such loans are funded from the**  
58 **property assessed clean energy local finance fund established under section 260.036;**

59           (16) To insure any loan, the funds of which are to be used for the development and  
60 marketing of energy resources as authorized by sections 260.005 to 260.125;

61           (17) To make temporary loans, with or without interest, but with such security for  
62 repayment as the authority deems reasonably necessary and practicable, to defray development  
63 costs of energy resource development projects;

64           (18) To collect reasonable fees and charges in connection with making and servicing its  
65 loans, notes, bonds and obligations, commitments, and other evidences of indebtedness made,  
66 issued or entered into to develop energy resources, and in connection with providing technical,  
67 consultative and project assistance services in the area of energy development. Such fees and  
68 charges shall be limited to the amounts required to pay the costs of the authority, including  
69 operating and administrative expenses, and reasonable allowance for losses which may be  
70 incurred;

71           (19) To enter into agreements or other transactions with any federal or state agency, any  
72 person and any domestic or foreign partnership, corporation, association, or organization to carry  
73 out the provisions of sections 260.005 to 260.125;

74           (20) To sell, at public or private sale, any mortgage and any real or personal property  
75 subject to that mortgage, negotiable instrument, or obligation securing any loan;

76           (21) To procure insurance against any loss in connection with its property in such  
77 amounts, and from such insurers, as may be necessary or desirable;

78           (22) To consent to the modification of the rate of interest, time of payment for any  
79 installment of principal or interest, or any other terms, of any loan, loan commitment, temporary  
80 loan, contract, or agreement made directly by the authority;

81           (23) To make and publish rules and regulations concerning its lending, insurance of  
82 loans, and temporary lending to defray development costs, along with such other rules and  
83 regulations as are necessary to effectuate its purposes. No rule or portion of a rule promulgated

84 under the authority of sections 260.005 to 260.125 shall become effective unless it has been  
85 promulgated pursuant to the provisions of section 536.024, RSMo;

86 (24) To borrow money to carry out and effectuate its purpose in the area of energy  
87 resource development and to issue its negotiable bonds or notes as evidence of any such  
88 borrowing in such principal amounts and upon such terms as shall be determined by the  
89 authority, and to secure such bonds or notes by the pledge of revenues, mortgages, or notes of  
90 others as authorized by sections 260.005 to 260.125.

91 2. The authority shall develop a hazardous waste facility if the study required in section  
92 260.037 demonstrates that a facility is economically feasible. The facility, which shall not  
93 include a hazardous waste landfill, may be operated by any eligible party as specified in this  
94 section. The authority shall begin development of the facility by July 1, 1985.

**260.036. 1. The authority is hereby directed to establish a fund designated as the**  
2 **"Property Assessed Clean Energy Local Finance Fund" whereby the authority shall,**  
3 **subject to available funds, loan funds to clean energy development boards to establish and**  
4 **operate property assessed clean energy programs under sections 67.2800 to 67.2835. The**  
5 **state treasurer shall be custodian of the fund and shall approve disbursements from the**  
6 **fund in accordance with sections 30.170 and 30.180. Upon appropriation, money in the**  
7 **fund shall be used solely for the administration of sections 67.2800 to 67.2835.**  
8 **Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining**  
9 **in the fund at the end of the biennium shall not revert to the credit of the general revenue**  
10 **fund. The state treasurer shall invest moneys in the fund in the same manner as other**  
11 **funds are invested. Any interest and moneys earned on such investments shall be credited**  
12 **to the fund.**

13 2. The property assessed clean energy local finance fund shall be funded from:

14 (1) Any grants, contributions, or other funds received by the authority from the  
15 federal government or any other source for the purpose of establishing or operating a  
16 property assessed clean energy program;

17 (2) The proceeds of any revenue bonds or other obligations issued by the authority  
18 for the purpose of funding the property assessed clean energy local finance fund;

19 (3) The revenues received from loan agreements entered into between the authority  
20 and participating clean energy development boards; and

21 (4) Any other available funds so designated by the authority.

22 3. Subject to available funding, clean energy development boards may apply to the  
23 authority for financing to establish and maintain property assessed clean energy programs.  
24 If approved, the authority and the clean energy development board shall enter into a loan  
25 agreement and any other documentation necessary for the clean energy development board

26 **to pledge the special assessment revenues collected under assessment contracts, as defined**  
27 **in section 67.2800, entered into as part of the property assessed clean energy program, less**  
28 **any administrative or financing costs retained by the clean energy development board, to**  
29 **the authority.**

260.080. No part of the funds of the authority shall inure to the benefit of or be  
2 distributable to its members or other private persons except that the authority is authorized and  
3 empowered to pay reasonable compensation for services rendered as herein provided for **and**  
4 **authorized to establish and operate the property assessed clean energy local finance fund**  
5 **under section 260.036 and to make, purchase, or participate in the purchase of loans to**  
6 **finance the development and marketing of property assessed clean energy programs under**  
7 **paragraph (d) of subdivision (15) of section 260.035.**

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