

SECOND REGULAR SESSION

[CORRECTED]

HOUSE BILL NO. 2344

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MILLER.

6207H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.2800, 67.2810, 67.2815, 67.2820, and 67.2830, RSMo, and to enact in lieu thereof eleven new sections relating to the property assessment clean energy act.

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

Section A. Sections 67.2800, 67.2810, 67.2815, 67.2820, and 67.2830, RSMo, are
2 repealed and eleven new sections enacted in lieu thereof, to be known as sections 67.2800,
3 67.2810, 67.2815, 67.2820, 67.2830, 67.2840, 67.2850, 67.2855, 67.2860, 67.2865, and 67.2870,
4 to read as follows:

67.2800. 1. Sections 67.2800 to ~~[67.2835]~~ **67.2870** shall be known and may be cited as
2 the "Property Assessment Clean Energy Act".

3 2. As used in sections 67.2800 to ~~[67.2835]~~ **67.2870**, the following words and terms
4 shall mean:

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

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

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.

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

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

18 (5) "Clean energy development board", a board formed by one or more municipalities
19 under section 67.2810;

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

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

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

28 (c) Automatic energy control systems;

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

31 (e) Caulking and weatherstripping;

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

35 (g) Energy recovery systems; ~~and~~

36 (h) Daylighting systems;

37 (i) **Disaster resiliency improvements, which are improvements that reduce**
38 **repetitive losses recognized by the National Flood Insurance Program, the Community**
39 **Rating System, the Federal Emergency Management Agency, or recommend by the**
40 **Insurance Institute for Business and Home Safety FORTIFIED program and include**
41 **backup power generation systems that are permanently affixed to a building or facility and**
42 **garage door fortifications; and**

43 (j) **Water conservation improvements, that create a beneficial reduction in water**
44 **loss, use, and waste of resources, avoid any damage to water quality and improve water**
45 **management practices that reduce or enhance the use of water;**

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

47 (8) **"Program administrator", an entity selected by the clean energy development**
48 **board to administer the PACE program;**

49 (9) "Project", any energy efficiency improvement or renewable energy improvement;
50 ~~[(9)]~~ (10) "Property assessed clean energy local finance fund", a fund that may be
51 established by the authority for the purpose of making loans to clean energy development boards
52 to establish and maintain property assessed clean energy programs;

53 ~~[(10)]~~ (11) "Property assessed clean energy program", a program established by a clean
54 energy development board to finance energy efficiency improvements or renewable energy
55 improvements under section 67.2820;

56 (12) **"Qualified improvement", any energy efficient improvement, renewable energy**
57 **improvement, water conservation improvement, or flood mitigation improvement;**

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

62 3. All projects undertaken under sections 67.2800 to ~~[67.2835]~~ **67.2870** are subject to
63 the applicable municipality's ordinances and regulations, including but not limited to those
64 ordinances and regulations concerning zoning, subdivision, building, fire safety, and historic or
65 architectural review.

67.2810. 1. One or more municipalities may form clean energy development boards for
2 the purpose of exercising the powers described in sections 67.2800 to ~~[67.2835]~~ **67.2870**. Each
3 clean energy development board shall consist of not less than three members, as set forth in the
4 ordinance or order establishing the clean energy development board. Members shall serve terms
5 as set forth in the ordinance or order establishing the clean energy development board and shall
6 be appointed:

7 (1) If only one municipality is participating in the clean energy development board, by
8 the chief elected officer of the municipality with the consent of the governing body of the
9 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 political subdivision of the state and
13 shall have all powers necessary and convenient to carry out and effectuate the provisions of
14 sections 67.2800 to ~~[67.2835]~~ **67.2870**, 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 ~~[67.2835]~~ **67.2870**;

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 other
22 things of value from any public or private source;

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

25 (7) To levy and collect special assessments under an assessment contract with a property
26 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 provide
28 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 assistance
32 services offered;

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

38 (12) To take whatever actions necessary to participate in and administer a clean energy
39 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 file
41 with each municipality that participated in the formation of the clean energy development board
42 and with the director of the department of natural resources an annual report for the preceding
43 calendar year that includes:

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

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

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

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

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

56 4. No lawsuit to set aside the formation of a clean energy development board or to
57 otherwise question the proceedings related thereto shall be brought after the expiration of sixty
58 days from the effective date of the ordinance or order creating the clean energy development
59 board. No lawsuit to set aside the approval of a project, an assessment contract, or a special
60 assessment levied by a clean energy development board, or to otherwise question the proceedings
61 related thereto shall be brought after the expiration of sixty days from the date that the
62 assessment 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 there
3 are sufficient resources to complete the project and that the estimated economic benefit expected
4 from the project during the financing period is equal to or greater than the cost of the project.
5 **The board shall consider market value as determined under section 67.2850 and include**
6 **such consideration in its findings.**

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

9 (1) A description of the project, including the estimated cost of the project and details
10 on how the project will either reduce energy consumption or create energy from renewable
11 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 energy
15 development board toward costs of the project will not exceed the final cost of the project;

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

19 (4) An agreement by the property owner to pay annual special assessments for a period
20 not to exceed ~~[twenty years]~~ **the weighted average of useful life of the qualified**
21 **improvements to which the greatest portion of funds disbursed under the assessment**
22 **contract is attributable, not to exceed twenty-five years**, as specified in the assessment
23 contract;

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

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

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

37 4. The clean energy development board shall provide a copy of each signed assessment
38 contract to the local county assessor and county collector and shall cause a copy of such
39 assessment contract to be recorded in the real estate records of the 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 board
42 from the date that each annual assessment under the assessment contract becomes due. Such
43 special assessments shall be collected by the county collector in the same manner and with the
44 same priority as ad valorem real property taxes. Once collected, the county collector shall pay
45 over such special assessment revenues to the clean energy development board in the same
46 manner in which revenues from ad valorem real property taxes are paid to other taxing districts.
47 Such special assessments shall be collected as provided in this subsection from all subsequent
48 property owners, including the state and all political subdivisions thereof, for the term of the
49 assessment contract.

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

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 whereby
4 a property owner may apply to a clean energy development board to finance the costs of a project
5 through annual special assessments levied under an assessment contract.

6 2. A clean energy development board may establish application requirements and criteria
7 for project financing approval as it deems necessary to effectively administer such program and

8 ration available funding among projects, including but not limited to requiring projects to meet
9 certain energy efficiency standards.

10 3. Clean energy development boards shall ensure that any property owner approved by
11 the board to participate in a property assessed clean energy program or clean energy conduit
12 financing under sections 67.2800 to ~~[67.2835]~~ **67.2870** shall have good creditworthiness or shall
13 otherwise be considered a low risk for failure to meet the obligations of the program or conduit
14 financing.

15 4. A clean energy development board may require an initial energy audit conducted by
16 a qualified home energy auditor as defined in subdivision (4) of subsection 1 of section 640.153
17 as a prerequisite to project financing through a property assessed clean energy program as well
18 as inspections to verify project completion.

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

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

**67.2840. 1. A program administrator shall not permit contractors or other third
2 parties to advertise the availability of assessment contracts that are administered by the
3 program administrator, or to solicit property owners on behalf of the program
4 administrator, unless both of the following requirements are met:**

5 **(1) The contractor maintains any permits, licenses, or registrations required for**
6 **engaging in its business in the jurisdiction where it operates and maintains the required**
7 **bond and insurance coverage in the jurisdiction; and**

8 **(2) The program administrator obtains the contractor's written agreement that the**
9 **contractor or third party shall act in accordance with chapter 407 and other applicable**
10 **advertising and marketing laws and regulations.**

11 **2. A program administrator shall not provide any direct or indirect cash payment**
12 **or other thing of material value to a contractor or third party in excess of the actual price**

13 charged by that contractor or third party to the property owner for one or more qualified
14 improvements financed by an assessment contract.

15 3. A program administrator shall not provide to a contractor engaged in soliciting
16 financing agreements on its behalf any information that discloses the maximum amount
17 of funds for which a property owner may be eligible for qualifying improvements or the
18 amount of equity in a property.

19 4. A program administrator shall not reimburse a contractor or third party for
20 expenses for advertising and marketing campaigns and collateral that solely benefit the
21 contractor. A program administrator may reimburse a contractor's bona fide and
22 reasonable training expenses related to PACE financing, provided that:

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

24 (2) The reimbursement is paid directly to the contractor, and is not paid to its
25 salespersons or agents.

26 5. A program administrator shall not provide any direct cash payment or other
27 thing of value to a property owner explicitly conditioned upon that property owner
28 entering into an assessment contract. Notwithstanding the provisions of this subsection,
29 programs or promotions that offer reduced fees or interest rates to property owners are
30 neither a direct cash payment or "other thing of value", provided that the reduced fee or
31 interest rate is reflected in the assessment contract and in no circumstance provided to the
32 property owner as cash consideration.

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

2 67.2850. 1. A program administrator shall derive market value using one of the
following:

3 (1) An automated valuation model provided by a third-party vendor; or

4 (2) An appraisal conducted within twelve months of the application date by a
5 state-licensed real estate appraiser.

6 2. The market value determination by the program administrator shall be disclosed
7 to the property owner prior to signing the assessment contract.

2 67.2855. A program administrator shall not submit, present, or otherwise approve
3 for recordation by a municipality or clean energy development board an assessment
contract unless the following criteria are satisfied:

4 (1) All regular property taxes for the property that shall be subject to the
5 assessment contract are current. The program administrator shall ask a property owner
6 whether there has been no more than one late payment of regular property taxes on the

7 property for the previous three years or since the current owner acquired the property,
8 whichever period is shorter;

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

11 (3) The property that shall be subject to the assessment contract has no notices of
12 default currently recorded which have not been rescinded;

13 (4) The property owner has not been a party to any bankruptcy proceedings within
14 the last three years, except that the property owner may have been party to a bankruptcy
15 proceeding that was discharged or dismissed between two and seven years before the
16 application date;

17 (5) The property owner is current on all mortgage debt on the subject property and
18 has no more than one late payment during the 12 months immediately preceding the
19 application date on any mortgage or nonmortgage debt, excluding medical debt, if the late
20 payment did not exceed thirty days past due;

21 (6) The property that shall be subject to the assessment contract is within the
22 geographical boundaries of the applicable PACE program;

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

30 (8) The program administrator shall verify the existence of recorded PACE
31 assessments and shall ask if the property owner has authorized additional PACE
32 assessments on the same subject property that have not yet been recorded. The failure of
33 a property owner to comply with this subdivision shall not invalidate an assessment
34 contract or any obligations thereunder. The existence of a prior PACE assessment or a
35 prior assessment contract shall not constitute evidence that the assessment contract under
36 consideration is affordable or meets any other program requirements.

37

38 The program administrator shall use commercially reasonable and available methods to
39 verify the above.

67.2860. 1. Either the municipality or clean energy development board that offers
2 qualifying improvements shall be required to develop a disclosure form for homeowners

3 that shall disclose all key financing terms of the assessment contract including, but not
4 limited to:

- 5 (1) The total amount funded, including the cost of the installed improvements
6 together with program fees and capitalized interest, if any;
- 7 (2) The annual tax obligation process and schedule;
- 8 (3) The annual payment amounts;
- 9 (4) The term of the assessment;
- 10 (5) The fixed rate of interest charged;
- 11 (6) The annual percentage rate;
- 12 (7) A payment schedule that fully amortizes the amount financed;
- 13 (8) The improvements to be installed;
- 14 (9) That if the property owner sells or refinances their property they may be
15 required by a mortgage lender to pay off the assessment as a condition of sale or refinance;
- 16 (10) That no penalty shall be assessed or collected for prepayment of the
17 assessment;
- 18 (11) That any potential utility savings are not guaranteed, and shall not reduce the
19 assessment payments or total assessment amount;
- 20 (12) That the assessment shall be collected along with their property taxes and shall
21 result in a lien on their property from the date of assessment contract;
- 22 (13) That the payments shall be added to their property tax bill, and if they pay
23 their property taxes through their mortgage payment, using an impound account, the
24 property owner should notify their mortgage lender, so that their monthly mortgage
25 payment can be adjusted to cover their increased property tax bill;
- 26 (14) That failure to pay the property assessment may result in penalties and fees,
27 along with issuance of a tax certificate that could result in the property owner losing their
28 home; and
- 29 (15) That the property owner should seek professional tax advice if he or she has
30 questions regarding tax credits, tax deductibility, or of the tax impact on the assessment
31 contract or financing agreement.

32 2. A program administrator shall be required to present the disclosure form to a
33 property owner for acknowledgment prior to the execution of an assessment contract.

34 3. A program administrator shall be required, as a part of its assessment contract,
35 to provide a three-day right to cancel the qualifying improvements financing. The three-
36 day right expires on or before midnight of the third business day after a property owner
37 signs the assessment contract. A program administrator shall be required to provide a

38 printed form for the right to cancel that is presented to the property owner no later than
39 the time of signing of the assessment contract.

40 4. Either the municipality or clean energy development board shall develop a form
41 to notify the property owner in writing and to include in the call procedure in section
42 67.2865 that such owner may rescind any assessment contract entered into pursuant to this
43 section not later than three business days after entering into such agreement. All program
44 administrators shall be required to provide the form at the same time as the disclosure
45 form above. The notification shall be provided to the property owner as a printed copy
46 unless the property owner agrees to an electronic copy.

67.2865. 1. Before a property owner executes an assessment contract the program
2 administrator shall do the following:

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

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

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

13 (1) The property owner on the call has the right to have other persons present for
14 the call, and an inquiry as to whether the property owner would like to exercise the right
15 to include anyone else on the call. This shall occur at the onset of the call, after the
16 determination of the preferred language of communication;

17 (2) The property owner on the call is informed that they should review the
18 assessment contract and financing estimate and disclosure form with all other owners of
19 the property;

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

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

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

27 (6) The term of the assessment contract;

28 (7) That payments on the assessment contract shall be made through an additional
29 annual assessment on the property and paid either directly to the county tax collector's
30 office as part of the total annual secured property tax bill, or through the property owner's
31 mortgage impound account, and that if the property owner pays his or her taxes through
32 an impound account he or she should notify their mortgage lender to discuss adjusting his
33 or her monthly mortgage payment by the estimated monthly cost of the assessment
34 contract;

35 (8) That the property shall be subject to a lien during the term of the assessment
36 contract and that the obligations under the assessment contract may be required by a
37 mortgage lender to be paid in full before the property owner sells or refinances the
38 property;

39 (9) That the property owner has disclosed whether the property has received or is
40 seeking additional PACE assessments and has disclosed all other PACE assessments or
41 special taxes that are or about to be placed on the property, if known to and understood
42 by the property owner;

43 (10) That any potential utility savings are not guaranteed, and may not reduce the
44 assessment payments or total assessment amount;

45 (11) That the program administrator and contractor do not provide tax advice, and
46 that the property owner should seek professional tax advice if he or she has questions
47 regarding tax credits, tax deductibility, or of other tax impacts on the PACE assessment
48 or assessment contract;

49 (12) That the property owner has a three-day right to cancel the assessment
50 contract; and

51 (13) The estimated date the first payment shall be due.

2 67.2870. A program administrator, contractor, or a third party shall not make any
3 representation as to the tax deductibility of an assessment contract unless that
4 representation is consistent with representations, statements, or opinions of the Internal
5 Revenue Service or department of revenue with regard to the tax treatment of PACE
assessments.

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