

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0821-03
Bill No.: HCS for HB 215
Subject: Utilities; Property, Real and Personal
Type: Original
Date: March 11, 2019

Bill Summary: This proposal modifies provisions for the Property Assessment Clean Energy Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on General Revenue	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Division of Finance Fund (0550)	\$6,000 or (\$63,957)	\$6,000 or (\$69,069)	\$6,000 or (\$69,760)
Total Estimated Net Effect on <u>Other</u> State Funds	\$6,000 or (\$63,957)	\$6,000 or (\$69,069)	\$6,000 or (\$69,760)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Division of Finance Fund (0550)	0 or 1 FTE	0 or 1 FTE	0 or 1 FTE
Total Estimated Net Effect on FTE	0 or 1 FTE	0 or 1 FTE	0 or 1 FTE

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	(Greater than \$100,000)	(Greater than \$100,000)	(Greater than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state the following regarding this proposal:

Sections 67.2800 - 67.2819

For the purposes of this fiscal note it is assumed that the funding for this new program would be appropriated from the Division of Finance Fund. Further, it is assumed that other licensed entities currently paying fees and assessments to the Division of Finance fund will bear the cost of implementation until such time as the fees and assessments paid by licensed residential Property Assessment Clean Energy (PACE) program administrators will adequately cover the cost of implementing this legislation.

This proposal requires that a residential PACE program administrator obtain a license and maintain an annual registration with the Division of Finance. It appears that California is the only state that has established a similar PACE licensing program. California's program became effective January 1, 2019. The number of potential applicants for a PACE license in Missouri is unknown. Research indicates that there are currently nine such lenders operating in Anaheim, CA.

For the purposes of this fiscal note the Division assumes it will receive approximately 10 - 12 applications which could result in an annual increase of up to \$6,000 to the Division of Finance Fund (12 x \$500 Application (renewal) fee = \$6,000).

The proposal also requires that residential program administrators in this state be subject to examination by the division for compliance with the provisions of this chapter. These exams are required to be conducted at least once every 24 months and such other times as the director may determine. The bill language provides that the program administrator be responsible to pay the cost of the examination.

The division may need one FTE to license and examine these entities. If the number of licensees is higher than expected or the workload is greater than anticipated, the department will request additional FTE and appropriation through the budget process.

ASSUMPTION (continued)

Oversight notes the Division of Finance Fund (0550) had a fund balance of \$4,894,231 as of January 2019.

Oversight assumes DIFP may need an additional FTE for the work required by this proposal; therefore, Oversight will range the fiscal impact from \$0 (DIFP does not need an additional FTE) to the costs indicated by DIFP for one additional FTE.

Officials from the **Department of Economic Development - Public Service Commission, Department of Economic Development - Office of Public Counsel, Department of Economic Development - Division of Energy, Department of Natural Resources, Attorney General's Office and Office of Prosecution Services** each assume the proposal will have no fiscal impact on their respective organizations.

Oversight notes that the agencies mentioned above have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

Officials from the **Clean Energy Development Board of the City of St. Louis (CEDB)** assume the following regarding this proposal:

The exact costs to implement this proposal are unknown, although there are certain reasonable assumptions that can be made to provide an estimate. The following are costs incurred by program operation through the Clean Energy Development Board and program administrators to comply with the proposed legislation.

Section 67.2800, RSMo. - Missouri Merchandising Practices Act Compliance – (Clean Energy Development Board and program administrator and their respective external and internal counsel) = estimated **\$75,000** cost for the initial review and set up and **\$30,000** annually thereafter for continuing maintenance/compliance. The proposal seeks to define Missouri PACE programs as “merchandise” under chapter 407 despite that chapter exempting any entities, such as banks, which are regulated by the Division of Finance. Thus, there is an inherent incongruity in this proposal if PACE programs and administrators are to be overseen and regulated by both the Division of Finance and also subject to the Missouri Merchandising Practices Act (MMPA). In addition, and accordingly, there will be significant legal and other third-party costs incurred by the Clean Energy Development Board and the program administrator to assess, analyze, and review the MMPA and to ensure ongoing compliance therewith (as estimated above).

ASSUMPTION (continued)

Section 67.2816, RSMo. - Division of Finance Licensing - **\$500** year-one initial license fee; **\$500** annual registration fee thereafter; estimated **\$7,500** for initial organization enrollment and registration; estimated **\$1,000** annually thereafter for license renewals. This bill proposes to require the Division of Finance to create a licensing and oversight examination process for residential program administrators contracted with Clean Energy Development Boards. Current Missouri program administrators have no experience with the Division of Finance. The Division of Finance will be directed to develop the experience and expertise necessary to license special assessment district programs for financing for the PACE programs deployed by Clean Energy Development Boards. It is also unclear the cost of staff time and outside experts needed to comply with any examination process that might be developed. We have not accounted for those costs.

Section 67.2816, RSMo. - Truth-In-Lending Act Compliance - Clean Energy Development Board counsel, outside counsel, Program Admin Counsel and lending syndicate counsel review = estimated **\$250,000** for year one and estimated **\$100,000** annually thereafter. This requirement raises many questions because the federal Truth-in-Lending Act is directed at regulation of open- and closed-end consumer credit cost disclosures (for example, mortgage banking loans and credit cards) between private parties and not special assessment district financing such as PACE assessments. For example, special assessments are treated as property taxes that are repaid annually pursuant to a property taxation schedule to public agencies whereas typical mortgage payments occur monthly with the assessment of interest charges and payments and prepayments being applied as received by that creditor. Also, Clean Energy Development Boards issue bonds for PACE projects that are transferred to the residential program administrator in exchange for project financing to be disbursed to authorized contractors upon satisfactory completion of the eligible measures included in a PACE project. Consumer credit typically involves a lender and borrower in privity with each other (with one party advancing funds and the other party directly repaying those funds pursuant to a monthly payment schedule). For PACE, the flow of funds and financial structure is between property owners, contractors who install eligible improvements, PACE providers/administrators, property tax collectors, and Clean Energy Development Boards, which is wholly different from typical and far simpler bilateral credit agreements between borrower and lender. In order to comply with Truth-in-Lending Act requirements (assuming those requirements could even be applied to PACE financing), significant and on-going legal review would be required as well as coordination with the Division of Finance, Clean Energy Development Board, program administrator, and outside counsel for the program capital providers.

ASSUMPTION (continued)

Section 67.2816, RSMo. - Division of Finance Oversight Examinations for Sections 67.2817, 67.2818 and 67.2819, RSMo. is estimated to be no less than **\$120,000** annually (see below). This proposal also states that the “residential program administrator shall be responsible for paying the costs of examinations which the director [of the Division of Finance] may assess upon the completion of an exam. The original fiscal note generated by Legislative Research for HB 215 estimated Division of Finance costs “could exceed” \$200,000 per year, when reviewing compliance only with Sections 67.2817 and 67.2818, RSMo. How much of these costs would be borne by program administrators is unknown; however, such costs are estimated at no less than **\$50,000** annually.

This bill adds an additional section, Section 67.2819, RSMo. - Contractor Oversight and Training, to the Division of Finance examination process. This section concerns the hundreds of independent energy and home performance contracting companies that participate in Missouri PACE programs. The Division of Finance does not currently regulate or conduct examinations of energy and home performance or similar contractors participating in special assessment district financing programs such as PACE programs in Missouri. The cost of this expanded examination role in this bill, which would be borne by the program operation through its program administrators, is unknown. We estimate such cost to be a minimum of **\$20,000** annually. We also have no way to estimate the cost to all of the third-party companies that might be included in such examination process, nor can we predict if this will prove to eliminate parties from using the PACE product due to the overburden of regulatory requirements. Further, this bill adds Truth-In-Lending Act audit requirements to the Division of Finance and the portion of this added oversight included in examination costs, also to be borne by the program administrator, is unknown; however, we estimate such audit costs at a minimum of **\$50,000** annually.

This bill proposes to restructure oversight of Missouri Clean Energy Development Boards residential PACE programs and place them under a licensing and examination program with the Division of Finance. The previous fiscal note report for HB 215 stated, “[it] appears that California is the only state that has established a similar PACE licensing program.” Following the adoption of this similar licensing program, revenue for residential PACE in California has steeply declined by more than 50% due to regulatory burdens.

2018 revenue for the Clean Energy Development Board of the City of St. Louis was approximately \$2,000,000 in residential PACE origination. A conservative estimate of the impact of increased regulation under a state agency as proposed in this bill would be at least a 30% reduction in total annual revenue. A 30% reduction in total annual revenue based on 2018 figures would be approximately **\$600,000** in revenue losses annually.

ASSUMPTION (continued)

Officials from the **St. Louis County Clean Energy Development Board (Missouri Energy Savings Program)** assume the same fiscal impact as the Clean Energy Development Board of the City of St. Louis (CEDB) except for the following difference:

2018 revenue for the St. Louis County Clean Energy Development Board was approximately \$1,800,000 in residential PACE origination. A conservative estimate of the impact of increased regulation under a state agency as proposed in HCS HB215 would be at least a 30% reduction in total annual revenue. A 30% reduction in total annual revenue based on 2018 figures would be approximately **\$540,000** in revenue losses annually.

Officials from the **Show Me PACE Clean Energy District (SMP)** assume the following regarding this proposal:

The exact costs to implement this proposal are not specifically known; however, there are certain reasonable assumptions that can be made to provide the requested estimate. The following costs are costs incurred by program operation through the Clean Energy Development Board (CEDB) and program administrators. While it seems the proposal is targeting residential PACE only, the following analysis demonstrates that costs and losses will be incurred by both residential and commercial PACE within the Show Me PACE CED. Additionally, while some costs will certainly apply to one of our program administrators, it is possible that all costs may apply to both program administrators, as our administrator has subcontracted the residential program administration duties.

Section 67.2800, RSMo. - Missouri Merchandising Practices Act Compliance: estimated **\$75,000** cost for the initial review and set up and **\$15,000** annually thereafter for continuing maintenance/compliance.

A clear analysis is imperfect due to the proposal's addition to define Missouri PACE programs as "merchandise" under chapter 407 despite that chapter exempting any entities, such as banks, which are regulated by the Division of Finance. Due to this conflict, we believe significant legal and other third-party costs will be incurred by the CEDB and both residential and commercial program administrators to assess, analyze and review the MMPA and to ensure our ongoing compliance.

Section 67.2816, RSMo. - Division of Finance Licensing: **\$1,000** year one initial license fee; **\$1,000** annual registration fee thereafter; estimated **\$10,000** for initial organization enrollment and registration; estimated **\$2,000** annually thereafter for license renewals (multiplied by 2 administrators).

ASSUMPTION (continued)

This bill sets to require the Division of Finance create a licensing and oversight examination process for residential program administrators contracted with SMP CEDB. SMP CEDB program administrators have no experience with the Division of Finance nor the Division with PACE. The Division of Finance will be charged with developing the processes and expertise to license special assessment district programs for financing for the PACE programs deployed by Clean Energy Development Boards.

Section 67.2816, RSMo. - Truth-In-Lending Act Compliance: estimated **\$250,000** for year one and estimated **\$40,000** annually thereafter.

The federal Truth-in-Lending Act is directed at regulation of open and closed end consumer credit cost disclosures (for example, mortgage banking loans and credit cards) between private parties and not special assessment district financing such as PACE assessments. For example, special assessments are treated as property taxes that are repaid annually pursuant to a property taxation schedule to public agencies whereas typical mortgage payments occur monthly with the assessment of interest charges and payments and prepayments being applied as received by that creditor. Also, Clean Energy Development Boards issue bonds for PACE projects that are transferred to the residential program administrator in exchange for project financing to be disbursed to authorized contractors upon satisfactory completion of the eligible measures included in a PACE project.

Consumer credit typically involves a lender and borrower in privity with each other (with one party advancing funds and the other party directly repaying those funds pursuant to a monthly payment schedule). For PACE, the flow of funds and financial structure is between property owners, contractors who install eligible improvements, PACE providers/administrators, property tax collectors, and Clean Energy Development Boards which is wholly different from typical and far simpler bilateral credit agreements between borrower and lender.

In order to comply with Truth-in-Lending Act requirements (assuming those requirements could be meaningfully applied to PACE financing), significant and on-going legal review would be required as well as coordination with the Division of Finance, Clean Energy Development Board, program administrator, and outside counsel for the program capital providers.

Section 67.2816, RSMo. - Division of Finance Oversight Examinations for Sections 67.2817, 67.2818 and 67.2819, RSMo: estimated **\$100,000** annually.

ASSUMPTION (continued)

This proposal also states that the "residential program administrator shall be responsible for paying the costs of examinations which the director [of the Division of Finance] may assess upon the completion of an exam. The original fiscal note generated for HB 215 estimated Division of Finance costs "could exceed" \$200,000 per year, when reviewing compliance only with Sections 67.2817 and 67.2818, RSMo. How much of these costs would be borne by program administrators is unknown; however, such costs are estimated at **\$50,000** annually.

This bill adds an additional section, Section 67.2819, RSMo. - Contractor Oversight and Training, to the Division of Finance examination process. This concerns the hundreds of independent energy and home performance contracting companies that participate in Missouri PACE programs. The Division of Finance does not currently regulate or conduct examinations of energy and home performance or similar contractors participating in special assessment district financing programs such as PACE programs in Missouri. The cost of this expanded examination role, which would be borne by the program operation through its program administrators, is unknown. We estimate such cost to be a minimum of **\$20,000** annually.

Further, this bill adds Truth-In-Lending Act audit requirements to the Division of Finance and the portion of this added oversight included in examination costs, also to be borne by the program administrator, is unknown; however, we estimate such audit costs at a minimum of **\$30,000** annually.

All combined, year one is expected to cost **\$436,000** and **\$158,000** thereafter.

This bill proposes to restructure oversight of the Show Me PACE CEDB's residential PACE programs and place them under a licensing and examination program with the Division of Finance. The previous fiscal note report for HB 215 stated, "[it] appears that California is the only state that has established a similar PACE licensing program." Following the adoption of this similar licensing program, revenue for residential PACE in California has steeply declined by more than 50%.

2018 revenue for the Show Me PACE CEDB was approximately \$76,500 from \$10,576,540 in commercial PACE origination. While the full expected cost of this legislation may not be borne by our commercial program, it is expected that 20% of year one (\$87,200) and 30% (\$47,400) of year two costs will be incurred by this program. This equates to an additional \$22,000 fee per commercial project in year one and an additional \$12,000 per project cost thereafter. This assumes the district can cover the initial additional legal and staffing costs and that deal flow would not decrease.

ASSUMPTION (continued)

We contend after discussions with our commercial PACE capital providers that this cost increase, which would be directly passed onto the property owners, would only further the disparity between PACE project size.

The Show Me PACE CEDB purposefully created a district administrator that was a nonprofit as to meet the public private partnership mission of PACE and for benefitting all of Missouri. This bill will most likely end this endeavor, as our nonprofit administrator cannot subsidize the district at such high costs, as it has for the past three years. The SMP CEDB would be forced to obtain a new administrator that has a broader for profit portfolio, which would only increase the costs more, as our current administrator provides the least cost services in the country. This additional cost of a higher priced administrator will further diminish the future potential projects for the SMP CEDB.

The Show Me PACE CEDB is in the process of launching residential PACE. Therefore we have no numbers to provide as to losses from this bill.

Oversight is unable to verify the assumptions provided by these Clean Energy/PACE boards. However, Oversight assumes these boards will incur increased costs to comply with this proposal. Therefore, Oversight will reflect a cost to local political subdivisions of "Greater than \$100,000" for each fiscal year. Oversight will not reflect the loss of revenue estimated by these boards as this would be an indirect fiscal impact.

Officials from the **City of Kansas City** assume the proposal will have no fiscal impact on their organization.

In response to a previous version, officials from the **City of Springfield** and **St. Louis County** each assumed the proposal would have no fiscal impact on their respective organizations.

Oversight notes that the agencies mentioned above have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for local political subdivisions.

In response to a previous version, officials from **Carroll County** assumed the proposal would have a fiscal impact but they were unable to calculate it.

ASSUMPTION (continued)

Oversight is uncertain what fiscal impact Carroll County could expect as a result of this proposal; therefore, Oversight will not reflect the fiscal impact at this time on the fiscal note. If additional information is received as to the fiscal impact of this proposal on local political subdivisions, Oversight will update the fiscal note.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other cities and counties were requested to respond to this proposed legislation but did not. For a general listing of political subdivisions included in our database, please refer to www.legislativeoversight.mo.gov.

<u>FISCAL IMPACT - State Government</u>	FY 2020 (10 Mo.)	FY 2021	FY 2022
DIVISION OF FINANCE FUND			
<u>Revenue</u> - DIFP - application fees p. 3	\$6,000	\$6,000	\$6,000
<u>Cost</u> - DIFP	\$0 or ...	\$0 or ...	\$0 or ...
Personal Services	(\$36,667)	(\$44,440)	(\$44,884)
Fringe Benefits	(\$21,682)	(\$26,153)	(\$26,288)
Equipment and Expense	<u>(\$11,608)</u>	<u>(\$4,476)</u>	<u>(\$4,588)</u>
Total Costs - DIFP	<u>(\$69,957)</u>	<u>(\$75,069)</u>	<u>(\$75,760)</u>
Net FTE Change - DIFP	0 or 1 FTE	0 or 1 FTE	0 or 1 FTE
ESTIMATED NET EFFECT ON THE DIVISION OF FINANCE FUND	\$6,000 or <u>(\$63,957)</u>	\$6,000 or <u>(\$69,069)</u>	\$6,000 or <u>(\$69,760)</u>
Estimated Net FTE Change to the Division of Finance Fund	0 or 1 FTE	0 or 1 FTE	0 or 1 FTE

FISCAL IMPACT - Local Government

FY 2020
(10 Mo.)

FY 2021

FY 2022

**LOCAL POLITICAL SUBDIVISIONS
- CLEAN ENERGY BOARDS**

Cost - to comply with requirements of
this proposal

(Greater than
\$100,000)

(Greater than
\$100,000)

(Greater than
\$100,000)

**ESTIMATED NET EFFECT ON
LOCAL POLITICAL SUBDIVISIONS
- CLEAN ENERGY BOARDS**

(Greater than
\$100,000)

(Greater than
\$100,000)

(Greater than
\$100,000)

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill modifies provisions for the Property Assessment Clean Energy Act.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Insurance, Financial Institutions and Professional Registration
Department of Natural Resources
Office of Prosecution Services
Department of Economic Development - Public Service Commission
Department of Economic Development - Office of Public Counsel
Department of Economic Development - Division of Energy
Attorney General's Office
St. Louis County
City of Kansas City
City of Springfield
Carroll County
Clean Energy Development Board of the City of St. Louis
St. Louis County Clean Energy Development Board
Show Me PACE Clean Energy District



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March 11, 2019

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March 11, 2019