

FIRST REGULAR SESSION

# HOUSE BILL NO. 153

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE O'DONNELL.

0835H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 67.2800, 67.2810, 67.2815, 67.2817, 67.2830, and 67.2840, RSMo, and to enact in lieu thereof six new sections relating to the property assessment clean energy act.

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

Section A. Sections 67.2800, 67.2810, 67.2815, 67.2817, 67.2830, and 67.2840, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 67.2800, 67.2810, 67.2815, 67.2817, 67.2830, and 67.2840, to read as follows:

67.2800. 1. Sections 67.2800 to 67.2840 shall be known and may be cited as the "Property Assessment Clean Energy Act".

2. As used in sections 67.2800 to 67.2840, 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~~ **thirty** 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

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.

15 unified development consisting of multiple adjoining parcels of property under section  
16 67.2825;

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

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

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

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

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

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

31 (c) Automatic energy control systems;

32 (d) Heating, ventilating, or air conditioning distribution system modifications and  
33 replacements;

34 (e) Caulking and weatherstripping;

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

38 (g) Energy recovery systems; and

39 (h) Daylighting systems;

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

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

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

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

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

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

58 3. All projects undertaken under sections 67.2800 to 67.2840 are subject to the  
59 applicable municipality's ordinances and regulations, including but not limited to those  
60 ordinances and regulations concerning zoning, subdivision, building, fire safety, and historic  
61 or architectural review.

62 **4. Sections 67.2800 to 67.2840 shall not apply to any assessment contract,**  
63 **project, or PACE program entered into, undertaken, or established for any residential**  
64 **property.**

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 67.2840. Each  
3 clean energy development board shall consist of not less than three members, as set forth in  
4 the ordinance or order establishing the clean energy development board. Members shall serve  
5 terms as set forth in the ordinance or order establishing the clean energy development board  
6 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 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 67.2840, 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 67.2840;

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, **including the acquisition of loans or**  
23 **assessment contracts from other states or their municipalities and political subdivisions**

24 **to serve a common purpose of providing financing support or credit enhancement for**  
25 **any project;**

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

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

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

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

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

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

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

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

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

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

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

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

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

59 4. No lawsuit to set aside the formation of a clean energy development board or to  
60 otherwise question the proceedings related thereto shall be brought after the expiration of

61 sixty days from the effective date of the ordinance or order creating the clean energy  
62 development board. No lawsuit to set aside the approval of a project, an assessment contract,  
63 or a special assessment levied by a clean energy development board, or to otherwise question  
64 the proceedings related thereto shall be brought after the expiration of sixty days from the  
65 date that the 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  
3 there are sufficient resources to complete the project and that the estimated economic benefit  
4 expected from the project during the financing period is equal to or greater than the cost of the  
5 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 details  
9 on how the project will either reduce energy consumption or create energy from renewable  
10 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 received  
16 or will receive a special benefit by financing a project through the clean energy development  
17 board that equals or exceeds the total assessments due under the assessment contract;

18 (4) An agreement by the property owner to pay annual special assessments for a  
19 period not to exceed ~~twenty~~ **thirty** years, as specified in the assessment contract;

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

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

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

32 administration fees, interest, and other financing costs reasonably required by the clean  
33 energy development board.

34 4. The clean energy development board shall provide a copy of each signed  
35 assessment contract to the local assessor and collector for the county, or city not within a  
36 county, and shall cause a copy of such assessment contract to be recorded in the real estate  
37 records of the recorder of deeds for the county, or city not within a county.

38 5. Special assessments agreed to under an assessment contract shall be a lien on the  
39 property against which it is assessed on behalf of the applicable clean energy development  
40 board from the date that each annual assessment under the assessment contract becomes due.  
41 Such special assessments shall be collected by the collector for the county, or city not within a  
42 county, in the same manner and with the same priority as ad valorem real property taxes[  
43 ~~subject to the provisions of subsection 8 of this section~~]. Once collected, the collector for the  
44 county, or city not within a county, shall pay over such special assessment revenues to the  
45 clean energy development board in the same manner in which revenues from ad valorem real  
46 property taxes are paid to other taxing districts. Such special assessments shall be collected  
47 as provided in this subsection from all subsequent property owners, including the state and all  
48 political subdivisions thereof, for the term of the assessment contract.

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

56 7. **Except as otherwise provided in section 67.2840**, sections 67.2816, 67.2817,  
57 67.2818, and 67.2819 shall apply only to PACE programs for projects to improve residential  
58 properties of four or fewer units. Notwithstanding any provision of law to the contrary, any  
59 clean energy development board formed to improve commercial properties, properties owned  
60 by nonprofit or not-for-profit entities, governmental properties, or nonresidential properties in  
61 excess of four residential units shall be exempt from the provisions of sections 67.2816,  
62 67.2817, 67.2818, and 67.2819, nor shall such sections apply to the commercial PACE  
63 programs and commercial PACE assessment contracts of any clean energy development  
64 board engaged in both commercial and residential property programs. Notwithstanding any  
65 provision of law to the contrary, any clean energy development board that ceases to finance  
66 new projects to improve residential properties of four or fewer units before January 1, 2022,  
67 shall be exempt from the provisions of sections 67.2816, 67.2817, 67.2818, and 67.2819.

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 recording 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~~ **thirty** 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

38 sufficient resources to complete the project and that the estimated economic benefit expected  
39 from the project during the financing period is equal to or greater than the cost of the project.

40 3. Any assessment contract for a project that, combined with any existing and  
41 outstanding indebtedness secured by the benefitted property, results in a loan-to-value ratio  
42 between eighty percent and ninety-seven percent of the true value in money, as determined by  
43 the assessor pursuant to chapter 137, plus ten percent of such amount, of the benefitted  
44 property prior to the project as determined by reference to the assessment records for tax  
45 purposes for the most recent completed assessment by the county, or city not within a county,  
46 shall include provision of an insurance policy providing coverage for any remaining cost of  
47 fulfilling the assessment contract, including any accumulated interest, in the event the  
48 property is foreclosed upon, if such product exists. Such insurance policy shall run with the  
49 land in the same manner as the other obligations set forth in the assessment contract.

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

58 5. Prior to the execution of an assessment contract, the clean energy development  
59 board shall advise the property owner in writing that any delinquent assessment shall be a lien  
60 on the property subject to the assessment contract and that the obligations under the PACE  
61 assessment contract continue as an obligation against the improved property if the property  
62 owner sells or refinances the property and that a purchaser or lender may require that before  
63 the owner may sell or refinance the property that the owner may be required to pay the  
64 assessment contract in full.

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

73 7. The clean energy development board, within three days of entering an assessment  
74 contract, shall provide any holder of a first mortgage loan a copy of the assessment contract



75 and a statement that includes a brief description of the project, the cost of the project, the  
76 annual assessment that will be levied, and the number of annual assessments. Transmittal  
77 shall be by United States mail to the holder of the first mortgage loan of record.

78 8. The clean energy development board shall maintain a public website with current  
79 information about the PACE program as the board deems appropriate to inform consumers  
80 regarding the PACE program. The website shall list approved contractors for the PACE  
81 program. The website shall disclose the process for property owners or their successors to  
82 request information about the assessment contract, the status of the assessment contract, and  
83 for all questions including contract information to obtain a payoff amount for the release of an  
84 assessment contract.

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

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  
3 thereto. The bonds shall be authorized by resolution of the clean energy development board,  
4 shall bear such date or dates, and shall mature at such time or times as the resolution shall  
5 specify, provided that the term of any bonds issued for a clean energy conduit financing shall  
6 not exceed ~~twenty~~ **thirty** years. The bonds shall be in such denomination, bear interest at  
7 such rate, be in such form, be issued in such manner, be payable in such place or places, and  
8 be subject to redemption as such resolution may provide. Notwithstanding any provision to  
9 the contrary under this section, issuance of the bonds shall conform to the requirements of  
10 subsection 1 of section 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. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective and  
2 apply **only** to the residential PACE programs of clean energy development boards and  
3 participating municipalities ~~after~~ **from** January 1, 2022, **to August 28, 2025. Beginning**  
4 **August 28, 2025, all residential properties shall be exempt from the provisions of**  
5 **sections 67.2816 to 67.2819 and no assessment contract, project, or PACE program shall**  
6 **be entered into, undertaken, or established for any residential property.**

7 2. Sections 67.2816, 67.2817, 67.2818, and 67.2819 shall be effective and apply **only**  
8 to residential PACE assessment contracts entered into after January 1, 2022, **but before**  
9 **August 28, 2025.**

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