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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 234 Session of  
2017

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INTRODUCED BY BLAKE, RESCHENTHALER, SABATINA, SCHWANK, FONTANA,  
SCAVELLO, BREWSTER, COSTA, YUDICHAK, MCGARRIGLE, LEACH,  
HAYWOOD, RAFFERTY, TARTAGLIONE, HUGHES, BOSCOLA, McILHINNEY,  
KILLION, BROWNE, TOMLINSON AND GREENLEAF, JANUARY 31, 2017

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REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,  
JANUARY 31, 2017

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AN ACT

1 Amending Title 12 (Commerce and Trade) of the Pennsylvania  
2 Consolidated Statutes, authorizing assessments for energy  
3 improvements in districts designated by municipalities.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 12 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 43

9 PROPERTY ASSESSED CLEAN ENERGY PROGRAM

10 Sec.

11 4301. Purpose.

12 4302. Definitions.

13 4303. Establishment of a program.

14 4304. Notice to mortgage holder required for participation.

15 4305. Review required.

16 4306. Notice.

17 4307. Lien.

1 4308. Collection of assessments.

2 4309. Bonds or notes.

3 4310. Joint implementation.

4 § 4301. Purpose.

5 This chapter authorizes the establishment of a property  
6 assessed clean energy program in the Commonwealth, which is  
7 important so that owners of commercial and industrial properties  
8 can obtain low-cost, long-term financing for energy efficiency,  
9 water conservation and renewable energy projects.

10 § 4302. Definitions.

11 The following words and phrases when used in this chapter  
12 shall have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 "Alternative energy system." Energy generated from  
15 alternative energy sources as defined under the act of November  
16 30, 2004 (P.L.1672, No.213), known as the Alternative Energy  
17 Portfolio Standards Act. In addition to these energy sources,  
18 programs may recognize alternative energy sources not included  
19 in the Alternative Energy Portfolio Standards Act when approving  
20 qualified project applications.

21 "Assessment." An increase in the property tax rate for a  
22 commercial or industrial property located in a district where  
23 the property owner has chosen to participate in the program. The  
24 property tax increase shall be used solely to repay the bonds.  
25 The municipality or county that established the program agrees  
26 to collect and remit the increased property tax amount on the  
27 assessed property to the local financier or the owner financier  
28 under section 4308 (relating to collection of assessments).

29 "Bond." The term includes any public or private financing  
30 note, mortgage, loan, deed of trust, instrument, refunding note

1 or other evidence of indebtedness or obligation used to finance  
2 a qualified project.

3 "Business." A corporation, partnership, sole proprietorship,  
4 limited liability company, business trust or other commercial  
5 entity approved by the authority.

6 "Clean energy project." A project which does any of the  
7 following:

8 (1) Replaces or supplements an existing energy system  
9 that utilizes nonrenewable energy with an energy system that  
10 utilizes alternative energy.

11 (2) Facilitates the installation of an alternative  
12 energy system in an existing building or a major renovation  
13 of a building.

14 (3) Facilitates the retrofit of an existing building to  
15 meet high-performance building standards.

16 (4) Installs equipment to facilitate or improve energy  
17 conservation or energy efficiency, including heating and  
18 cooling equipment and solar thermal equipment.

19 "District." An area or group of real properties within a  
20 municipality or county, designated by the municipality or county  
21 for the purpose of establishing a property assessed clean energy  
22 program.

23 "Local financing." Financing provided or facilitated by a  
24 municipality, county, district, economic development  
25 corporation, related authority or any government sponsored  
26 entity. This term does not include general obligation bonds.

27 "Owner financing." Financing by a real property owner or a  
28 third-party provider. This term may include a power purchase  
29 agreement.

30 "Power purchase agreement." A financial arrangement in which

1 a third party owns, operates and maintains a permanently affixed  
2 energy generation unit for a property owner and the property  
3 owner purchases power from the third party at agreed-upon rates  
4 in the arrangement. The third party would have the ability to  
5 finance its equipment acquisitions with an assessment under a  
6 property assessed clean energy program.

7 "Program." A property assessed clean energy program  
8 established under this chapter.

9 "Property assessed clean energy program." A means of  
10 financing qualified projects in a district through an  
11 assessment.

12 "Qualified party." A contractor, subcontractor or financial  
13 institution that meets the following standards:

14 (1) Possesses all technical qualifications and  
15 resources, including equipment, management, technical and  
16 craft labor personnel, and financial resources necessary to  
17 perform the contracted responsibilities, or will obtain the  
18 contracted responsibilities through the use of qualified  
19 subcontractors.

20 (2) Possesses all valid, current licenses, registrations  
21 or other certificates required for the contractor or its  
22 employees by Federal, State or local law necessary for the  
23 type of work required for the project.

24 (3) Does not have any outstanding liability to the  
25 locality in the form of tax obligations, fines or other fees,  
26 unless the inspector, contractor, subcontractor or financial  
27 institution has entered into and is in compliance with a  
28 payment agreement with the locality for such taxes, fines or  
29 fees.

30 (4) Meets all bonding requirements, as required by

1 applicable law or contract specifications, and all insurance  
2 requirements as required by applicable law or contract  
3 specifications, including general liability insurance,  
4 workers' compensation insurance and unemployment insurance  
5 requirements.

6 "Qualified project." The installation or modification of a  
7 permanent improvement fixed to real property that is a clean  
8 energy project, water conservation project or alternative energy  
9 system, which generates measurable energy savings or reductions  
10 in water usage and the installation is performed by a qualified  
11 party in a district. The term includes installation of  
12 alternative energy-generating equipment affixed to the land or  
13 building.

14 "Real property." Any commercial or industrial land or  
15 building owned by an individual, partnership, limited liability  
16 corporation, corporation or nonprofit. The term does not include  
17 multi-family housing or any residential property.

18 "Water conservation project." A project that reduces the  
19 usage of water or increases the efficiency of water usage.

20 § 4303. Establishment of a program.

21 A municipality or county may establish a property assessed  
22 clean energy program by adopting an ordinance or resolution that  
23 will establish the program, define the district and provide  
24 other operational standards and guidelines. A county that  
25 establishes a program must notify any municipality that may be  
26 in the district of their possible inclusion, before a resolution  
27 establishing a program is approved. A municipality or county may  
28 contract with a third party to administer the program.

29 § 4304. Notice to mortgage holder required for participation.

30 Before a real property can establish an assessment under the

1 program and begin a local financing or an owner financing of a  
2 qualified project, the following shall occur:

3 (1) The holder of any first mortgage lien on the  
4 property must be given written notice of the real property  
5 owner's intention to participate in the program and  
6 acknowledge in writing to the property owner and municipality  
7 or county that established the program that they have  
8 received such notice.

9 (2) The holder of the mortgage lien must provide written  
10 consent to the property owner and municipality or county that  
11 established the program that the property may participate in  
12 the program.

13 § 4305. Review required.

14 (a) Review required.--A program established under this  
15 chapter must require for each proposed qualified project a  
16 review of energy baseline or water usage baseline and the  
17 projected energy savings or water usage reductions in order to  
18 establish the projected energy savings or water usage  
19 reductions.

20 (b) Verification of completion.--After a qualified  
21 improvement is completed, the municipality or county shall  
22 obtain verification that the qualified improvement was properly  
23 completed and is operating as intended.

24 § 4306. Notice.

25 (a) Notice.--A municipality or county that establishes a  
26 program shall post online and make available to the public a  
27 notice of each qualified project financed through an assessment.

28 (b) Contents of notice.--The notice under subsection (a)  
29 must contain:

30 (1) The legal description of the property.

1           (2) The name of each property owner.

2           (3) The total amount of the qualified improvements of  
3 the project.

4           (4) The assessment needed to satisfy the qualified  
5 improvements.

6           (5) A reference to the statutory assessment lien  
7 provided under this chapter.

8 § 4307. Lien.

9           (a) General rule.--An assessment under this chapter and any  
10 interest or penalties on the assessment:

11           (1) Is a first and prior lien against the real property  
12 on which the assessment is imposed from the date on which the  
13 notice of contractual assessment is recorded and until the  
14 assessment, interest or penalty is satisfied.

15           (2) Has the same priority status as a lien for any other  
16 tax imposed by any agency, municipality or county of the  
17 Commonwealth.

18           (b) Lien.--The lien runs with the land and that portion of  
19 the assessment under the assessment contract that has not yet  
20 become due is not eliminated by foreclosure of a property tax  
21 lien. The assessment cannot be accelerated or extinguished until  
22 fully repaid.

23           (c) Enforcement.--The assessment lien may be enforced by the  
24 municipality or county in the same manner that a property tax  
25 lien against real property may be enforced by the municipality  
26 or county to the extent the enforcement is consistent with the  
27 laws of this Commonwealth.

28           (d) Delinquency charge.--Delinquent installments of the  
29 assessments incur interest and penalties in the same manner as  
30 delinquent property taxes.

1 (e) Costs and expenses.--A municipality or county may  
2 recover costs and expenses, including attorney fees, in a suit  
3 to collect a delinquent installment of an assessment in the same  
4 manner as in a suit to collect a delinquent property tax.

5 § 4308. Collection of assessments.

6 The governing body of a municipality or county that  
7 establishes a district is required to collect the assessments  
8 for that district using their present tax collection process.

9 § 4309. Bonds or notes.

10 (a) Issuance.--Local financing or owner financing may be  
11 used to issue bonds or notes to finance qualified projects in a  
12 district.

13 (b) Restrictions.--Bonds or notes issued under this chapter  
14 may not be general obligations of the municipality or county.

15 (c) Use of proceeds.--Funds generated from the issuance of a  
16 bond may only be used for the following purposes:

17 (1) Design, engineering and project development costs of  
18 a qualified project.

19 (2) Infrastructure related to and necessary for a  
20 qualified project.

21 (3) Purchase and installation cost of any equipment  
22 needed for a qualified project.

23 (4) Payment of normal and customary issuance and closing  
24 fees of a bond.

25 (5) Normal and customary administrative fees necessary  
26 to continue operations of the municipal or county financing  
27 agency. The fees can include, but are not limited to, audits  
28 and application fees.

29 § 4310. Joint implementation.

30 Any combination of municipalities or counties may agree to

1 jointly implement or administer a program under this chapter.

2 Section 2. This act shall take effect in 60 days.