

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 234 Session of 2017

INTRODUCED BY BLAKE, RESCENTIALER, SABATINA, SCHWANK, FONTANA, SCAVELLO, BREWSTER, COSTA, YUDICHAK, MCGARRIGLE, LEACH, HAYWOOD, RAFFERTY, TARTAGLIONE, HUGHES, BOSCOLA, McILHINNEY, KILLION, BROWNE, TOMLINSON, GREENLEAF, BARTOLOTTA, LAUGHLIN, VOGEL, FARNESE, DINNIMAN, STREET, ARGALL AND MENSCH, JANUARY 31, 2017

AS AMENDED ON SECOND CONSIDERATION, DECEMBER 11, 2017

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:

CHAPTER 43

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. Scope of work.

16 4306. Notice.

1 4307. Lien.

2 4308. Collection of assessments.

3 4309. Bonds.

4 4310. Joint implementation.

5 § 4301. Purpose.

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

11 § 4302. Definitions.

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

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

22 "Assessment." A charge against the real property within a
23 district which is levied and collected by the county or
24 municipality that establishes the district.

25 "Bond." The term includes any public or private financing
26 note, mortgage, loan, deed of trust, instrument, refunding note
27 or other evidence of indebtedness or obligation used to finance
28 a qualified project.

29 "Business." A corporation, partnership, sole proprietorship,
30 limited liability company, business trust or other commercial

1 entity.

2 "Clean energy project." A project which does any of the
3 following:

4 (1) Replaces or supplements an existing energy system
5 that utilizes nonrenewable energy with an energy system that
6 utilizes alternative energy.

7 (2) Facilitates the installation of an alternative
8 energy system in an existing building or a major renovation
9 of a building.

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

12 (4) Installs equipment to facilitate or improve energy
13 conservation or energy efficiency, including heating and
14 cooling equipment and solar thermal equipment.

15 "District." An area or group of real properties within a
16 municipality or county, designated by the municipality or county
17 for the purpose of establishing a property assessed clean energy
18 program.

19 "FINANCIAL INSTITUTION." ANY PERSON WHO IN THE ORDINARY <--
20 COURSE OF BUSINESS EXTENDS CREDIT BASED ON A LIEN, MORTGAGE OR
21 SECURITY INTEREST IN REAL PROPERTY OR AN ENCUMBRANCE OF REAL
22 PROPERTY, OR RELIES UPON A LIEN, MORTGAGE OR SECURITY INTEREST
23 IN REAL PROPERTY OR AN ENCUMBRANCE OF REAL PROPERTY TO SECURE A
24 CURRENT, CONTINGENT OR FUTURE PAYMENT OBLIGATION. THE TERM
25 INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

26 (1) A BANK, SAVINGS ASSOCIATION, TRUST COMPANY, CREDIT
27 UNION OR A SUBSIDIARY OR AFFILIATE OF A BANK, SAVINGS
28 ASSOCIATION, TRUST COMPANY OR CREDIT UNION.

29 (2) A PERSON ENGAGED IN THE MORTGAGE LENDING BUSINESS
30 SUBJECT TO, OR EXEMPT FROM LICENSING UNDER 7 PA.C.S. CH. 61

1 (RELATING TO MORTGAGE LOAN INDUSTRY LICENSING AND CONSUMER
2 PROTECTION).

3 (3) A PERSON SUBJECT TO OR EXEMPT FROM LICENSING UNDER
4 THE ACT OF FEBRUARY 19, 1980 (P.L.15, NO.9), KNOWN AS THE
5 REAL ESTATE LICENSING AND REGISTRATION ACT.

6 (4) A PERSON REGISTERED AS A MANAGEMENT COMPANY OR UNIT
7 INVESTMENT TRUST OR TREATED AS A BUSINESS DEVELOPMENT COMPANY
8 UNDER THE INVESTMENT COMPANY ACT OF 1940 (54 STAT. 789, 15
9 U.S.C. § 80A-1 ET SEQ.) OR IS EXCLUDED FROM REGISTRATION
10 UNDER THE INVESTMENT COMPANY ACT OF 1940.

11 (5) AN INSURANCE COMPANY.

12 (6) A PENSION OR EMPLOYEE HEALTH AND WELFARE FUND.

13 (7) AN ASSOCIATION ENGAGED IN CONSTRUCTION OR THE
14 DEVELOPMENT OR IMPROVEMENT OF REAL PROPERTY.

15 (8) A CONDOMINIUM OR COOPERATIVE ASSOCIATION OR PLANNED
16 COMMUNITY ASSOCIATION.

17 (9) A FEDERAL, STATE OR LOCAL AGENCY, AUTHORITY OR AN
18 INSTRUMENTALITY OF A GOVERNMENT ENTITY THAT IS ENGAGED IN THE
19 FINANCING OR SUPPORTS THE FINANCING OF REAL ESTATE
20 DEVELOPMENT OR THE PURCHASE OR IMPROVEMENT OF REAL ESTATE.

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

25 "Owner financing." A bond provided by a real property owner
26 or a third-party provider. This term may include a power
27 purchase agreement.

28 "Power purchase agreement." A financial arrangement in which
29 a third party owns, operates and maintains a permanently affixed
30 energy generation unit for a property owner and the property

1 owner purchases power from the third party at agreed-upon rates
2 in the arrangement. The third party would have the ability to
3 finance its equipment acquisitions with an assessment under a
4 property assessed clean energy program.

5 "Program." A property assessed clean energy program
6 established under this chapter.

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

10 "Qualified party." A contractor or subcontractor that meets
11 the following standards:

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

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

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

27 (4) Meets all bonding requirements, as required by
28 applicable law or contract specifications, and all insurance
29 requirements as required by applicable law or contract
30 specifications, including general liability insurance,

1 workers' compensation insurance and unemployment insurance
2 requirements.

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

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

15 "Water conservation project." A project that reduces the
16 usage of water or increases the efficiency of water usage.

17 § 4303. Establishment of a program.

18 The following apply:

19 (1) A municipality with a community or economic
20 development department or county may establish a property
21 assessed clean energy program by adopting an ordinance or
22 resolution that will establish the program, define the
23 district and provide other operational standards and
24 guidelines, which shall include, but not be limited to, the
25 following:

26 (i) Require all clean energy projects to comply with
27 national energy efficiency standards.

28 (ii) Develop criteria and procedures to determine
29 the eligibility of real property and owners for
30 participation in a program.

1 (iii) Other measures as needed to satisfy the
2 requirements of this chapter or to ensure that a program
3 is effective, efficient and fair to property owners.

4 (2) A county that establishes a program must notify any
5 municipality that may be in the district of their possible
6 inclusion, before a resolution establishing a program is
7 approved. A municipality or county may contract with a third
8 party to administer the program.

9 § 4304. Notice to ~~mortgage~~ LIEN holder required for <--
10 participation.

11 Before a real property can establish an assessment under the
12 program and begin a local financing or an owner financing of a
13 qualified project, the following shall occur:

14 (1) ~~The holder of any existing lien on the real property~~ <--
15 ANY FINANCIAL INSTITUTION HOLDING A LIEN, MORTGAGE OR <--
16 SECURITY INTEREST IN OR OTHER ENCUMBRANCE OF THE REAL
17 PROPERTY THAT SECURES A CURRENT, FUTURE OR CONTINGENT PAYMENT
18 OBLIGATION must be given written notice of the real property
19 owner's intention to participate in the program and
20 acknowledge in writing to the property owner and municipality
21 or county that established the program that they have
22 received such notice.

23 (2) ~~The holder of any existing lien on the real property~~ <--
24 ANY FINANCIAL INSTITUTION REQUIRED TO BE GIVEN NOTICE UNDER <--
25 PARAGRAPH (1) must provide written consent to the property
26 owner and municipality or county that established the program
27 that the property may participate in the program.

28 § 4305. Scope of work.

29 (a) Requirement.--A program shall require for each proposed
30 qualified project a scope of work, energy baseline or water

1 usage baseline and the projected energy savings or water usage
2 reductions in order to establish the viability of the qualified
3 project and the projected energy savings or water usage
4 reductions.

5 (b) Verification of completion.--After a qualified project
6 is completed, the municipality or county shall obtain
7 verification from the real property owner and from an
8 independent professional inspector or building code official
9 that the qualified project was properly completed.

10 § 4306. Notice.

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

14 (b) Contents of notice.--The notice under subsection (a)
15 must contain:

16 (1) The legal description of the property.

17 (2) The name of each property owner.

18 (3) The total amount of the qualified project and a
19 complete description of the qualified project.

20 (4) The assessment needed to satisfy the bond.

21 (5) A reference to the statutory assessment lien
22 provided under this chapter.

23 (6) The financing rate on the bond, the total amount of
24 the bond financing and any financing charges associated with
25 the bond.

26 § 4307. Lien.

27 (a) General rule.--If a property owner fails to pay
28 assessments due, including past due assessments and total
29 assessments on the property that may be discharged, compromised
30 or abated in the same manner as delinquent property tax

<--

1 obligations, an AN assessment under this chapter, INCLUDING PAST <--
2 DUE AMOUNTS AND REQUIRED FUTURE PAYMENTS and any interest or
3 penalties on the assessment:

4 (1) shall be a first and prior lien against the real
5 property on which the assessment is imposed from the date on
6 which the notice of contractual assessment is recorded and
7 until the assessment, interest or penalty is satisfied;

8 (2) shall have the same priority status as a lien for
9 any other tax imposed by any agency, municipality or county
10 of the Commonwealth and shall be treated as a tax imposed by
11 any agency, municipality or county; and <--

12 (3) must be recorded with the title, including all
13 information required under section 4306 (relating to notice),
14 until the lien is discharged; AND <--

15 (4) MAY BE DISCHARGED, COMPROMISED OR ABATED IN THE SAME
16 MANNER AS DELINQUENT PROPERTY TAX OBLIGATIONS.

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

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

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

30 (e) Costs and expenses.--A municipality or county may

1 recover costs and expenses, including attorney fees, in a suit
2 to collect a delinquent installment of an assessment in the same
3 manner as in a suit to collect a delinquent property tax.

4 § 4308. Collection of assessments.

5 The following apply:

6 (1) 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 and
9 remit for payment of the local financing or owner financing.

10 (2) The assessment shall be made only upon the real
11 property whose owner has executed a written agreement with
12 the governing body agreeing to the assessment.

13 (3) Proceeds may only be used to fund a local financing or
14 an owner financing and lasts only for the term of the local
15 financing or owner financing.

16 § 4309. Bonds.

17 (a) Issuance.--Local financing or owner financing may be
18 used to issue bonds to finance qualified projects.

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

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

23 (1) Design, engineering and project development costs of
24 a qualified project.

25 (2) Infrastructure related to and necessary for a
26 qualified project.

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

29 (4) Payment of normal and customary issuance and closing
30 fees of a bond.

1 (5) Normal and customary administrative fees necessary
2 to continue operations of the municipal or county financing
3 agency. The fees can include, but are not limited to, audits
4 and application fees.

5 § 4310. Joint implementation.

6 Any combination of municipalities or counties may agree to
7 jointly implement or administer a program under this chapter.

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