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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1069 Session of  
2015

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INTRODUCED BY BLAKE, BREWSTER, TARTAGLIONE, SABATINA, FONTANA,  
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JANUARY 28, 2016

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REFERRED TO COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT,  
JANUARY 28, 2016

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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; and  
4 imposing a fee.

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

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

9 CHAPTER 43

10 PENNSTAR - SUSTAINABLE TECHNOLOGY

11 ASSISTANCE FOR RETROFITS AND NEW

12 CONSTRUCTION

13 Sec.

14 4301. Purpose.

15 4302. Definitions.

16 4303. Authorized assessments.

17 4304. Written contract for assessment required.

18 4305. Establishment of program.

- 1 4306. Designation of districts.  
2 4307. Procedure for establishment of program.  
3 4308. Report regarding assessment.  
4 4309. Notice to mortgage holder required for participation.  
5 4310. Review required.  
6 4311. Direct acquisition by owner.  
7 4312. Recording of notice of contractual assessment.  
8 4313. Lien.  
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10 4315. Bonds or notes.  
11 4316. Joint implementation.  
12 4317. Prohibited acts.  
13 § 4301. Purpose.

14 This chapter furthers an essential public and governmental  
15 purpose, including:

- 16 (1) Improvement of the reliability of the Commonwealth's  
17 energy and water systems.  
18 (2) Economic stimulation and development.  
19 (3) Enhancement of property values.  
20 (4) Enhancement of employment opportunities.  
21 (5) Enhance and expand the use of energy savings and  
22 fuel efficient technologies in new construction and  
23 rehabilitation and redevelopment projects.  
24 (6) Reduction in greenhouse gas emissions and reliance  
25 upon foreign energy sources.

26 § 4302. Definitions.

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

30 "Alternative energy system." Energy generated from

1 alternative energy sources as defined under the act of November  
2 30, 2004 (P.L.1672, No.213), known as the Alternative Energy  
3 Portfolio Standards Act. In addition to these energy sources,  
4 programs may recognize alternative energy sources not included  
5 in the Alternative Energy Portfolio Standards Act when approving  
6 qualified project applications.

7 "Authorized officer." A person authorized by the governing  
8 body of the municipality or county to perform the duties  
9 provided under section 4307 (relating to procedure for  
10 establishment of program).

11 "Bond." The term includes any public or private financing  
12 note, mortgage, loan, deed of trust, instrument, refunding note  
13 or other evidence of indebtedness or obligation.

14 "Business." A corporation, partnership, sole proprietorship,  
15 limited liability company, business trust or other commercial  
16 entity approved by the authority.

17 "Clean energy project." A project which does any of the  
18 following:

19 (1) Replaces or supplements an existing energy system  
20 that utilizes nonrenewable energy with an energy system that  
21 utilizes alternative energy.

22 (2) Facilitates the installation of an alternative  
23 energy system in an existing building or a major renovation  
24 of a building.

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

27 (4) Installs equipment to facilitate or improve energy  
28 conservation or energy efficiency, including heating and  
29 cooling equipment and solar thermal equipment.

30 (5) An energy service project.

1 "Department." The Department of Community and Economic  
2 Development of the Commonwealth.

3 "District." A district created under a property-assessed  
4 clean energy program by a municipality or county that lies  
5 within the municipality's or county's jurisdictional boundaries.

6 "Municipality or county financing." Financing provided or  
7 facilitated by a municipality, county, district, economic  
8 development corporation or any government sponsored entity.

9 "Owner-arranged financing." Financing by a third-party  
10 provider. This term includes a power purchase agreement.

11 "Power purchase agreement." A financial arrangement in which  
12 a third party owns, operates and maintains a permanently affixed  
13 energy generation unit for a property owner and the property  
14 owner purchases power from the third party at agreed-upon rates  
15 in the arrangement. The third party would have the ability to  
16 finance its equipment acquisitions with an assessment under a  
17 property-assessed clean energy program.

18 "Program." Any property-assessed clean energy program  
19 established under this chapter.

20 "Property-assessed clean energy program." A program that  
21 enables the financing of a qualified project through an annual  
22 assessment on the property tax bill of the property.

23 "Qualified improvement." A permanent improvement fixed to  
24 real property that is a clean energy project or water  
25 conservation project performed by qualified parties.

26 "Qualified parties." Inspectors, contractors,  
27 subcontractors, and financial institutions that meet the  
28 following standards and submit sworn statements verifying that  
29 the inspector, contractor, subcontractor or financial  
30 institution meets the following standards:

1       (1) Possess all technical qualifications and resources,  
2 including equipment, management, technical and craft labor  
3 personnel, and financial resources necessary to perform the  
4 contracted responsibilities, or will obtain the contracted  
5 responsibilities through the use of qualified subcontractors.

6       (2) Possess all valid, current licenses, registrations  
7 or other certificates required for the contractor or its  
8 employees by Federal, State or local law necessary for the  
9 type of work required for the project.

10       (3) Not have any outstanding liability to the locality  
11 in the form of tax obligations, fines or other fees, unless  
12 the inspector, contractor, subcontractor or financial  
13 institution has entered into and is in compliance with a  
14 payment agreement with the locality for such taxes, fines or  
15 fees.

16       (4) Meet all bonding requirements, as required by  
17 applicable law or contract specifications, and all insurance  
18 requirements as required by applicable law or contract  
19 specifications, including general liability insurance,  
20 workers' compensation insurance and unemployment insurance  
21 requirements.

22       (5) For contractors and subcontractors, participate in a  
23 registered apprenticeship program with both classroom and  
24 field instruction that has graduated apprentices each year  
25 for the last three years for each separate trade or  
26 classification in which the inspector, contractor,  
27 subcontractor or financial institution employs craft  
28 employees, except truck drivers.

29       "Qualified project." The installation or modification of a  
30 qualified improvement. The term includes installation of

1 alternative energy-generating equipment affixed to the land or  
2 building.

3 "Real property." Privately owned commercial or industrial  
4 property owned by a business and real property of nonprofits or  
5 municipalities, counties or other government entity, including  
6 public schools.

7 "Sustainable technology assistance zone." An area of not  
8 more than three square miles, as designated by the Secretary of  
9 Community and Economic Development, which has a high number of  
10 real properties that could benefit from a qualified improvement  
11 or project.

12 "Water conservation project." A project that reduces the  
13 usage of water or increases the efficiency of water usage.

14 § 4303. Authorized assessments.

15 An assessment under this chapter may be imposed to repay the  
16 financing of qualified projects on real property located in a  
17 municipality or county designated under this chapter. Each  
18 qualified project must be executed by a qualified party.

19 § 4304. Written contract for assessment required.

20 A municipality or county may impose an assessment under this  
21 chapter only under a written contract with the record owner of  
22 the real property to be assessed.

23 § 4305. Establishment of program.

24 (a) General rule.--The governing body of a municipality or  
25 county may determine that it is convenient and advantageous to  
26 establish a program under this chapter by adopting an ordinance  
27 that is consistent with the provisions of this chapter.

28 (b) Contract.--An authorized official of the municipality or  
29 county that establishes a program may enter into a written  
30 contract with a record owner of real property in a municipality

1 or county designated under this chapter to impose an assessment  
2 to repay the owner's financing of a qualified project on the  
3 owner's property.

4 (c) Municipality or county financing.--If the program  
5 provides for municipality or county financing, the written  
6 contract described by subsection (b) must be a contract to  
7 finance the qualified improvement through assessments.

8 (d) Inclusion.--The financing for which assessments are  
9 imposed may include:

10 (1) The cost of materials and labor necessary for  
11 installation or modification of a qualified improvement.

12 (2) Permit fees.

13 (3) Inspection fees.

14 (4) Lender's fees.

15 (5) Program application and administrative fees.

16 (6) Project development and engineering fees.

17 (7) Third-party review fees, including verification  
18 review fees.

19 (8) Any other fees or costs that may be incurred by the  
20 property owner incident to the installation, modification or  
21 improvement on a specific or pro rata basis, as determined by  
22 the municipality or county.

23 § 4306. Designation of districts.

24 (a) General rule.--The governing body of a municipality or  
25 county may determine that it is convenient and advantageous to  
26 designate an area of the municipality or county as a district  
27 within which authorized municipality or county officials and  
28 record owners of real property may enter into written contracts  
29 to impose assessments to repay the financing by owners of  
30 qualified projects on the owners' property and, if authorized by

1 the municipality or county program, finance the qualified  
2 project.

3 (b) Municipality or county designation.--A district  
4 designated by the governing body of a municipality or county  
5 under this section:

6 (1) may include the entire municipality or county; and

7 (2) must be located wholly within the municipality's or  
8 county's jurisdiction.

9 (c) Multiple districts designated.--A municipality or county  
10 may designate more than one district. If multiple districts are  
11 designated, the districts may be separate, overlapping or  
12 coterminous.

13 (d) Department designation of sustainable technology  
14 assistance zones.--The department, in consultation with a  
15 municipality or county, may designate an area in the  
16 municipality as a sustainable technology assistance zone. The  
17 Secretary of Community and Economic Development shall designate  
18 no more than 12 such zones in this Commonwealth. The zones shall  
19 receive preference for funding under the act of July 9, 2008  
20 (1st Sp.Sess., P.L.1873, No.1), known as the Alternative Energy  
21 Investment Act.

22 (e) Preferential status.--Zones shall receive preferential  
23 status when they apply for any grant administered by the  
24 Commonwealth Financing Authority and preference for funding  
25 under the Alternative Energy Investment Act.

26 § 4307. Procedure for establishment of program.

27 (a) Establishment.--To establish a program under this  
28 chapter, the governing body of a municipality or county must, in  
29 the following order:

30 (1) Adopt an ordinance of intent that includes:



1           (i) a finding that, if appropriate, financing  
2 qualified projects through contractual assessments is a  
3 valid public purpose;

4           (ii) a statement that the municipality or county  
5 intends to make contractual assessments to repay  
6 financing for qualified projects available to property  
7 owners;

8           (iii) a description of the types of qualified  
9 projects that may be subject to contractual assessments;

10          (iv) a description of the boundaries of the  
11 district;

12          (v) a reference to the report on the proposed  
13 program prepared as provided by section 4308 (relating to  
14 report regarding assessment) and a statement identifying  
15 the location where the report is available for public  
16 inspection;

17          (vi) a statement of the time and place for a public  
18 hearing on the proposed program; and

19          (vii) a statement identifying the appropriate local  
20 official and the appropriate assessor-collector for  
21 purposes of consulting regarding collecting the proposed  
22 contractual assessments with property taxes imposed on  
23 the assessed property.

24          (2) Hold a public hearing at which the public may  
25 comment on the proposed program, including the report  
26 required by section 4308.

27          (3) Adopt an ordinance establishing the program and the  
28 terms of the program, including:

29           (i) each item included in the report under section  
30 4308; and

1           (ii) a description of each aspect of the program  
2           that may be amended only after another public hearing is  
3           held.

4           (b) Establishment resolution.--For purposes of subsection  
5           (a)(3)(i), the ordinance may incorporate the report or the  
6           amended version of the report, as appropriate, by reference.

7           (c) Amendment of program.--Subject to the terms of the  
8           resolution establishing the program as referenced by subsection  
9           (a)(3)(ii), the governing body of a municipality or county may  
10          amend a program by ordinance.

11          (d) Municipality or county duties.--A municipality or county  
12          may:

13           (1) hire and set the compensation of a program  
14           administrator and program staff;

15           (2) contract for professional services; or

16           (3) use existing staff from the municipality or county's  
17           economic and community development department, economic  
18           development corporation or redevelopment authority or other  
19           designated entity to administer a program.

20          (e) Imposition of fees.--A municipality or county may impose  
21          fees to offset the costs of administering a program. The fees  
22          authorized by this subsection may be assessed as:

23           (1) a program application fee paid by the property owner  
24           requesting to participate in the program;

25           (2) a component of the interest rate on the assessment  
26           in the written contract between the municipality or county  
27           and the property owner; or

28           (3) a combination of paragraphs (1) and (2).

29          § 4308. Report regarding assessment.

30          (a) Report.--The report for a proposed program required by

1 section 4307 (relating to procedure for establishment of  
2 program) must include:

3 (1) A map showing the boundaries of the proposed  
4 district.

5 (2) A form contract between the district and the  
6 property owner specifying the terms of:

7 (i) assessment under the program;

8 (ii) financing arranged by the property owner; and

9 (iii) financing provided by the municipality or  
10 county, district, economic development corporation or  
11 government-sponsored entity.

12 (3) A description of types of qualified projects that  
13 may be subject to contractual assessments.

14 (4) A statement identifying a municipality or county  
15 official authorized to enter into written contracts on behalf  
16 of the municipality or county.

17 (5) An optional plan for raising sufficient capital for  
18 municipality or county financing in lieu of property-owner-  
19 arranged financing for qualified projects. This may include  
20 bond issuance in accordance with 53 Pa.C.S. Pt. VII Subpt. B  
21 (relating to indebtedness and borrowing).

22 (6) If bonds will be issued in the capital markets to  
23 provide capital or if a special purpose bond will be issued  
24 to an individual investor as part of an owner-arranged  
25 financing to finance qualified projects as part of the  
26 program as provided by section 4315 (relating to bonds or  
27 notes):

28 (i) a method for ranking requests from property  
29 owners for financing through contractual assessments in  
30 priority order if requests appear likely to exceed the

1 authorization amount; and

2 (ii) a method for determining the interest rate and  
3 period during which contracting owners would pay an  
4 assessment.

5 (7) A method for ensuring that the period of the  
6 contractual assessment does not exceed the useful life of the  
7 qualified project that is the basis for the assessment.

8 (8) A description of the application process and  
9 eligibility requirements for financing qualified projects to  
10 be repaid through contractual assessments under the program.

11 (9) A method as prescribed by subsection (b) for  
12 ensuring that property owners requesting to participate in  
13 the program demonstrate the financial ability to fulfill  
14 financial obligations to be repaid through contractual  
15 assessments.

16 (10) A statement explaining the manner in which property  
17 will be assessed and assessments will be collected.

18 (11) A statement explaining the lender notice  
19 requirement provided by section 4309 (relating to notice to  
20 mortgage holder required for participation).

21 (12) A statement explaining the review requirement  
22 provided by section 4310 (relating to review required).

23 (13) A description of marketing and participant  
24 education services to be provided for the program.

25 (14) A description of quality assurance and antifraud  
26 measures to be instituted for the program.

27 (15) The procedures for collecting the proposed  
28 contractual assessments.

29 (16) A method for collecting sworn statements from the  
30 qualified parties affirming the parties meet the minimum

1 standards specified in section 4302 (relating to  
2 definitions).

3 (b) Financial ability.--The method for ensuring a  
4 demonstration of financial ability under subsection (a)(10) must  
5 be based on appropriate underwriting factors, including:

6 (1) Providing for verification that:

7 (i) The property owner requesting to participate  
8 under the program:

9 (A) is the legal owner of the benefited  
10 property;

11 (B) is current on mortgage and property tax  
12 payments;

13 (C) is not insolvent or in bankruptcy  
14 proceedings; and

15 (D) owns property that does not have a loan  
16 managed by a Federal agency that restricts  
17 participation under this chapter in the absence of  
18 consent by the lender holding the first lien.

19 (ii) The title of the benefited property is not in  
20 dispute.

21 (2) Requiring an appropriate ratio of the amount of the  
22 assessment to the assessed value of the property.

23 (c) Public inspection.--The municipality or county shall  
24 make the report available for public inspection:

25 (1) On the municipality's or county's Internet website.

26 (2) At the office of the official designated to enter  
27 into written contracts on behalf of the municipality or  
28 county under the program.

29 (d) Effectiveness of the program.--A report shall be filed  
30 with the department that measures the effectiveness of the

1 program.

2 § 4309. Notice to mortgage holder required for participation.

3 Before a municipality or county may enter into a written  
4 contract with a record owner of real property to impose an  
5 assessment to repay the financing of a qualified project under  
6 this chapter, the following shall occur:

7 (1) the holder of any first mortgage lien on the  
8 property must be given written notice of the owner's  
9 intention to participate in a program under this chapter on  
10 or before the 30th day before the date the written contract  
11 for assessment between the owner and the municipality or  
12 county is executed; and

13 (2) a written consent from the holder of the mortgage  
14 lien on the property must be obtained.

15 § 4310. Review required.

16 (a) Review required.--A program established under this  
17 chapter must require for each proposed qualified project a  
18 review of energy baseline conditions and the projected energy  
19 savings to establish the projected energy savings.

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 § 4311. Direct acquisition by owner.

25 The proposed arrangements for financing a qualified  
26 improvement may authorize the property owner to:

27 (1) Purchase directly the related equipment and  
28 materials for the installation or modification of a qualified  
29 improvement.

30 (2) Contract directly, including through lease, power

1 purchase agreement or other service contract, for the  
2 installation or modification of a qualified improvement.  
3 § 4312. Recording of notice of contractual assessment.

4 (a) Notice.--A municipality or county that authorizes  
5 financing through contractual assessments under this chapter  
6 shall file written notice of each contractual assessment in the  
7 real property records of the county in which the property is  
8 located.

9 (b) Contents of notice.--The notice under subsection (a)  
10 must contain:

11 (1) The legal description of the property.

12 (2) The name of each property owner.

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

15 (4) The amount and number of assessments to satisfy the  
16 qualified improvements.

17 (5) A reference to the statutory assessment lien  
18 provided under this chapter.

19 § 4313. Lien.

20 (a) General rule.--A contractual assessment under this  
21 chapter and any interest or penalties on the assessment:

22 (1) Is a first and prior lien against the real property  
23 on which the assessment is imposed from the date on which the  
24 notice of contractual assessment is recorded as provided by  
25 section 4312 (relating to recording of notice of contractual  
26 assessment) and until the assessment, interest or penalty is  
27 satisfied.

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

1 (b) Lien.--The lien runs with the land, and that portion of  
2 the assessment under the assessment contract that has not yet  
3 become due is not eliminated by foreclosure of a property tax  
4 lien. The assessment cannot be accelerated or extinguished until  
5 fully repaid.

6 (c) Enforcement.--The assessment lien may be enforced by the  
7 municipality or county in the same manner that a property tax  
8 lien against real property may be enforced by the municipality  
9 or county to the extent the enforcement is consistent with the  
10 laws of this Commonwealth.

11 (d) Delinquency charge.--Delinquent installments of the  
12 assessments incur interest and penalties in the same manner as  
13 delinquent property taxes.

14 (e) Costs and expenses.--A municipality or county may  
15 recover costs and expenses, including attorney fees, in a suit  
16 to collect a delinquent installment of an assessment in the same  
17 manner as in a suit to collect a delinquent property tax.  
18 § 4314. Collection of assessments.

19 The governing body of a municipality or county may contract  
20 with the governing body of another taxing unit or another  
21 entity, including a county assessor-collector, to perform the  
22 duties of the municipality or county relating to collection of  
23 assessments imposed by the municipality or county under this  
24 chapter.

25 § 4315. Bonds or notes.

26 (a) Issuance.--A municipality or county may issue bonds or  
27 notes to finance qualified projects through contractual  
28 assessments under this chapter under 53 Pa.C.S. Pt. VII Subpt. B  
29 (relating to indebtedness and borrowing).

30 (b) Restrictions.--Bonds or notes issued under this chapter



1 may not be general obligations of the municipality or county.  
2 The bonds or notes must be secured by one or more of the  
3 following as provided by the governing body of the municipality  
4 or county in the resolution or ordinance approving the bonds or  
5 notes:

6 (1) Payments of contractual assessments on benefited  
7 property in one or more specified districts designated under  
8 this chapter.

9 (2) Reserves established by the municipality or county  
10 from grants, bonds or net proceeds or other lawfully  
11 available funds.

12 (3) Municipal or county bond insurance, lines of credit,  
13 public or private guaranties, standby bond purchase  
14 agreements, collateral assignments, mortgages or any other  
15 available means of providing credit support or liquidity.

16 (4) Any other funds lawfully available for purposes  
17 consistent with this chapter.

18 (c) First lien.--A municipality or county pledge of  
19 assessments, funds or contractual rights in connection with the  
20 issuance of bonds or notes by the municipality or county under  
21 this chapter is a first lien on the assessments, funds or  
22 contractual rights pledged in favor of the person to whom the  
23 pledge is given, without further action by the municipality or  
24 county. The lien is valid and binding against any other person,  
25 with or without notice.

26 (d) Use of Proceeds.--Funds generated from the issuance of a  
27 program bond may only be used for the following purposes:

28 (1) Design and engineering of a clean energy project.

29 (2) Purchase and installation cost of any equipment  
30 needed for a clean energy project.

1           (3) Payment of normal and customary issuance and closing  
2           fees.

3           (4) Other administrative fees necessary to implement a  
4           clean energy project.

5   § 4316. Joint implementation.

6           (a) General rule.--Any combination of municipalities or  
7           counties may agree to jointly implement or administer a program  
8           under this chapter.

9           (b) Incentives and grants.--The department may establish a  
10           program to create incentives for municipalities or counties that  
11           agree to jointly implement or administer a program under  
12           subsection (a). The department may withhold grants under 12 Pa.  
13           Code Ch. 119 (relating to councils of government assistance  
14           program) from a municipality or county that refuses to jointly  
15           implement or administer a program under subsection (a).

16   § 4317. Prohibited acts.

17           A municipality or county that establishes a district under  
18           this chapter may not:

19           (1) make the issuance of a permit, license or other  
20           authorization from the municipality or county to a person who  
21           owns property in the district contingent on the person  
22           entering into a written contract to repay the financing of a  
23           qualified project through contractual assessments under this  
24           chapter; or

25           (2) otherwise compel a person who owns property in the  
26           district to enter into a written contract to repay the  
27           financing of a qualified project through contractual  
28           assessments under this chapter.

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