

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 AND ARGALL, JANUARY 31, 2017

SENATOR SCAVELLO, COMMUNITY, ECONOMIC AND RECREATIONAL DEVELOPMENT, AS AMENDED, OCTOBER 24, 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:

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 SCOPE OF WORK.

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16 4306. Notice.

1 4307. Lien.

2 4308. Collection of assessments.

3 4309. Bonds ~~or notes.~~ <--

4 4310. Joint implementation.

5 § 4301. Purpose.

6 This chapter authorizes the establishment of a property

7 assessed clean energy program in the Commonwealth, ~~which is~~ <--

8 ~~important so~~ TO ENSURE that owners of AGRICULTURAL, commercial <--

9 and industrial properties can obtain low-cost, long-term

10 financing for energy efficiency, water conservation and

11 renewable energy projects.

12 § 4302. Definitions.

13 The following words and phrases when used in this chapter

14 shall have the meanings given to them in this section unless the

15 context clearly indicates otherwise:

16 "Alternative energy system." Energy generated from

17 alternative energy sources as defined under the act of November

18 30, 2004 (P.L.1672, No.213), known as the Alternative Energy

19 Portfolio Standards Act. In addition to these energy sources,

20 programs may recognize alternative energy sources not included

21 in the Alternative Energy Portfolio Standards Act when approving

22 qualified project applications.

23 "Assessment." ~~An increase in the property tax rate for a~~ <--

24 ~~commercial or industrial property located in a district where~~

25 ~~the property owner has chosen to participate in the program. The~~

26 ~~property tax increase shall be used solely to repay the bonds.~~

27 ~~The municipality or county that established the program agrees~~

28 ~~to collect and remit the increased property tax amount on the~~

29 ~~assessed property to the local financier or the owner financier~~

30 ~~under section 4308 (relating to collection of assessments).~~

1 "ASSESSMENT." A CHARGE AGAINST THE REAL PROPERTY WITHIN A <--
2 DISTRICT WHICH IS LEVIED AND COLLECTED BY THE COUNTY OR
3 MUNICIPALITY THAT ESTABLISHES THE DISTRICT.

4 "Bond." The term includes any public or private financing
5 note, mortgage, loan, deed of trust, instrument, refunding note
6 or other evidence of indebtedness or obligation used to finance
7 a qualified project.

8 "Business." A corporation, partnership, sole proprietorship,
9 limited liability company, business trust or other commercial
10 entity approved by the authority. <--

11 "Clean energy project." A project which does any of the
12 following:

13 (1) Replaces or supplements an existing energy system
14 that utilizes nonrenewable energy with an energy system that
15 utilizes alternative energy.

16 (2) Facilitates the installation of an alternative
17 energy system in an existing building or a major renovation
18 of a building.

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

21 (4) Installs equipment to facilitate or improve energy
22 conservation or energy efficiency, including heating and
23 cooling equipment and solar thermal equipment.

24 "District." An area or group of real properties within a
25 municipality or county, designated by the municipality or county
26 for the purpose of establishing a property assessed clean energy
27 program.

28 "Local financing." ~~Financing~~ A BOND provided or facilitated <--
29 by a municipality, county, district, economic development
30 corporation, related authority or any government sponsored

1 entity. This term does not include general obligation bonds.

2 "Owner financing." ~~Financing~~ A BOND PROVIDED by a real <--
3 property owner or a third-party provider. This term may include
4 a power purchase agreement.

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

12 "Program." A property assessed clean energy program
13 established under this chapter.

14 "Property assessed clean energy program." A means of
15 financing qualified projects in a district through an
16 assessment.

17 "Qualified party." A contractor, OR subcontractor ~~or~~ <--
18 financial institution that meets the following standards:

19 (1) Possesses all technical qualifications and
20 resources, including equipment, management, technical and
21 craft labor personnel, and financial resources necessary to
22 perform the contracted responsibilities, or will obtain the
23 contracted responsibilities through the use of qualified
24 subcontractors.

25 (2) Possesses all valid, current licenses, registrations
26 or other certificates required for the contractor or its
27 employees by Federal, State or local law necessary for the
28 type of work required for the project.

29 (3) Does not have any outstanding liability to the
30 locality in the form of tax obligations, fines or other fees,

1 ~~unless the inspector, contractor, subcontractor or financial~~ <--
2 ~~institution~~ CONTRACTOR OR SUBCONTRACTOR has entered into and <--
3 is in compliance with a payment agreement with the locality
4 for such taxes, fines or fees.

5 (4) Meets all bonding requirements, as required by
6 applicable law or contract specifications, and all insurance
7 requirements as required by applicable law or contract
8 specifications, including general liability insurance,
9 workers' compensation insurance and unemployment insurance
10 requirements.

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

19 "Real property." Any AGRICULTURAL, commercial or industrial <--
20 land or building owned by an individual, partnership, limited
21 liability corporation, corporation or nonprofit. The term does
22 not include multi-family housing or any residential property.

23 "Water conservation project." A project that reduces the
24 usage of water or increases the efficiency of water usage.

25 § 4303. Establishment of a program.

26 ~~A municipality or county may establish a property assessed~~ <--
27 THE FOLLOWING APPLY: <--

28 (1) A MUNICIPALITY WITH A COMMUNITY OR ECONOMIC
29 DEVELOPMENT DEPARTMENT OR COUNTY MAY ESTABLISH A PROPERTY
30 ASSESSED clean energy program by adopting an ordinance or

1 resolution that will establish the program, define the
2 district and provide other operational standards and
3 guidelines. A county that establishes a program must notify, <--
4 WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING:

5 (I) REQUIRE ALL CLEAN ENERGY PROJECTS TO COMPLY WITH
6 NATIONAL ENERGY EFFICIENCY STANDARDS.

7 (II) DEVELOP CRITERIA AND PROCEDURES TO DETERMINE
8 THE ELIGIBILITY OF REAL PROPERTY AND OWNERS FOR
9 PARTICIPATION IN A PROGRAM.

10 (III) OTHER MEASURES AS NEEDED TO SATISFY THE
11 REQUIREMENTS OF THIS CHAPTER OR TO ENSURE THAT A PROGRAM
12 IS EFFECTIVE, EFFICIENT AND FAIR TO PROPERTY OWNERS.

13 (2) A COUNTY THAT ESTABLISHES A PROGRAM MUST NOTIFY any
14 municipality that may be in the district of their possible
15 inclusion, before a resolution establishing a program is
16 approved. A municipality or county may contract with a third
17 party to administer the program.

18 § 4304. Notice to mortgage holder required for participation.

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

22 (1) The holder of any ~~first mortgage~~ EXISTING lien on <--
23 the REAL property must be given written notice of the real <--
24 property owner's intention to participate in the program and
25 acknowledge in writing to the property owner and municipality
26 or county that established the program that they have
27 received such notice.

28 (2) The holder of ~~the mortgage~~ ANY EXISTING lien ON THE <--
29 REAL PROPERTY must provide written consent to the property
30 owner and municipality or county that established the program

1 that the property may participate in the program.

2 § 4305. Review required SCOPE OF WORK. <--

3 (a) Review required. A program established under this <--

4 chapter must require for each proposed qualified project a

5 review of REQUIREMENT.--A PROGRAM SHALL REQUIRE FOR EACH <--

6 PROPOSED QUALIFIED PROJECT A SCOPE OF WORK, energy baseline or

7 water usage baseline and the projected energy savings or water

8 usage reductions in order to establish the VIABILITY OF THE <--

9 QUALIFIED PROJECT AND THE projected energy savings or water

10 usage reductions.

11 (b) Verification of completion.--After a qualified

12 improvement PROJECT is completed, the municipality or county <--

13 shall obtain verification FROM THE REAL PROPERTY OWNER AND FROM <--

14 AN INDEPENDENT PROFESSIONAL INSPECTOR OR BUILDING CODE OFFICIAL

15 that the qualified improvement PROJECT was properly completed <--

16 and is operating as intended. <--

17 § 4306. Notice.

18 (a) Notice.--A municipality or county that establishes a

19 program shall post online and make available to the public a

20 notice of each qualified project financed through an assessment.

21 (b) Contents of notice.--The notice under subsection (a)

22 must contain:

23 (1) The legal description of the property.

24 (2) The name of each property owner.

25 (3) The total amount of the qualified improvements of <--

26 the project PROJECT AND A COMPLETE DESCRIPTION OF THE <--

27 QUALIFIED PROJECT.

28 (4) The assessment needed to satisfy the qualified <--

29 improvements BOND. <--

30 (5) A reference to the statutory assessment lien

1 provided under this chapter.

2 (6) THE FINANCING RATE ON THE BOND, THE TOTAL AMOUNT OF <--
3 THE BOND FINANCING AND ANY FINANCING CHARGES ASSOCIATED WITH
4 THE BOND.

5 § 4307. Lien.

6 (a) General rule.--An IF A PROPERTY OWNER FAILS TO PAY <--
7 ASSESSMENTS DUE, INCLUDING PAST DUE ASSESSMENTS AND TOTAL
8 ASSESSMENTS ON THE PROPERTY THAT MAY BE DISCHARGED, COMPROMISED
9 OR ABATED IN THE SAME MANNER AS DELINQUENT PROPERTY TAX
10 OBLIGATIONS, AN assessment under this chapter and any interest
11 or penalties on the assessment:

12 (1) ~~Is~~ SHALL BE a first and prior lien against the real <--
13 property on which the assessment is imposed from the date on
14 which the notice of contractual assessment is recorded and
15 until the assessment, interest or penalty is satisfied; <--

16 (2) ~~Has~~ SHALL HAVE the same priority status as a lien <--
17 for any other tax imposed by any agency, municipality or
18 county of the Commonwealth-- AND SHALL BE TREATED AS A TAX <--
19 IMPOSED BY ANY AGENCY, MUNICIPALITY OR COUNTY; AND

20 (3) MUST BE RECORDED WITH THE TITLE, INCLUDING ALL
21 INFORMATION REQUIRED UNDER SECTION 4306 (RELATING TO NOTICE),
22 UNTIL THE LIEN IS DISCHARGED.

23 (b) Lien.--The lien runs with the land and that portion of
24 the assessment under the assessment contract that has not yet
25 become due is not eliminated by foreclosure of a property tax
26 lien. The assessment cannot be accelerated or extinguished until
27 fully repaid.

28 (c) Enforcement.--The assessment lien may be enforced by the
29 municipality or county in the same manner that a property tax
30 lien against real property may be enforced by the municipality

1 or county to the extent the enforcement is consistent with the
2 laws of this Commonwealth.

3 (d) Delinquency charge.--Delinquent installments of the
4 assessments incur interest and penalties in the same manner as
5 delinquent property taxes.

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

10 § 4308. Collection of assessments.

11 The governing body of a municipality or county that THE <--
12 FOLLOWING APPLY:

13 (1) THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY THAT
14 establishes a district is required to collect the assessments
15 for that district using their present tax collection process.-- <--
16 AND REMIT FOR PAYMENT OF THE LOCAL FINANCING OR OWNER FINANCING. <--

17 (2) THE ASSESSMENT SHALL BE MADE ONLY UPON THE REAL
18 PROPERTY WHOSE OWNER HAS EXECUTED A WRITTEN AGREEMENT WITH
19 THE GOVERNING BODY AGREEING TO THE ASSESSMENT.

20 (3) PROCEEDS MAY ONLY BE USED TO FUND A LOCAL FINANCING OR
21 AN OWNER FINANCING AND LASTS ONLY FOR THE TERM OF THE LOCAL
22 FINANCING OR OWNER FINANCING.

23 § 4309. Bonds ~~or notes~~. <--

24 (a) Issuance.--Local financing or owner financing may be
25 used to issue bonds ~~or notes~~ to finance qualified projects in a <--
26 district.

27 (b) Restrictions.--Bonds ~~or notes~~ issued under this chapter <--
28 may not be general obligations of the municipality or county.

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

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

3 (2) Infrastructure related to and necessary for a
4 qualified project.

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

7 (4) Payment of normal and customary issuance and closing
8 fees of a bond.

9 (5) Normal and customary administrative fees necessary
10 to continue operations of the municipal or county financing
11 agency. The fees can include, but are not limited to, audits
12 and application fees.

13 § 4310. Joint implementation.

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

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