

Stricken language would be deleted from and underlined language would be added to present law.
Act 1074 of the Regular Session

State of Arkansas *As Engrossed: S3/5/13 S3/14/13 S3/20/13*
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 640

By: Senators D. Johnson, J. Woods

By: Representatives Leding, Barnett, C. Armstrong, Hawthorne, McGill, B. Overbey, T. Thompson, Sabin, D. Whitaker

For An Act To Be Entitled

AN ACT TO CREATE JOBS, RETAIN WEALTH, AND GROW
ARKANSAS'S ECONOMY BY ENABLING PROPERTY ASSESSED
CLEAN ENERGY FINANCING; TO AUTHORIZE THE
ESTABLISHMENT OF ENERGY IMPROVEMENT DISTRICTS TO FUND
LOANS FOR ENERGY EFFICIENCY IMPROVEMENTS, RENEWABLE
ENERGY PROJECTS, AND WATER CONSERVATION IMPROVEMENTS;
AND FOR OTHER PURPOSES.

Subtitle

TO AUTHORIZE THE ESTABLISHMENT OF ENERGY
IMPROVEMENT DISTRICTS TO FUND LOANS FOR
ENERGY EFFICIENCY IMPROVEMENTS, RENEWABLE
ENERGY PROJECTS, AND WATER CONSERVATION
IMPROVEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Title 8 is amended to add a new chapter to read as follows:

Chapter 15 – Energy Efficient Facilities

8-15-101. Title.

This chapter shall be known and may be cited as the “Property Assessed Clean Energy Act”.



8-15-102. Definitions.

As used in this chapter:

(1)(A) "Bond" means a revenue bond or note issued under this chapter.

(B) "Bond" includes any other financial obligation authorized by this chapter, the laws of this state, or the Arkansas Constitution;

(2) "District" means a property assessed energy improvement district established in this state by law for the express purpose of managing the PACE program;

(3) "Governmental entity" means a municipality, county, combination of cities or counties or both, or statewide district;

(4) "Owner" means an individual, partnership, association, corporation, or other legal entity that is recognized by law and has title or interest in any real property;

(5) "PACE program" means a property assessed clean energy program under which a real property owner can finance an energy efficiency improvement, a renewable energy project, and a water conservation improvement on the real property; and

(6) "Person" means an individual, partnership, association, corporation, or other legal entity recognized by law as having the power to contract.

8-15-103. Legislative findings.

The General Assembly finds that:

(1) It is in the best interests of the state to authorize districts that make available to citizens one (1) or more financing programs, including without limitation a PACE program, to fund energy efficiency improvements, renewable energy projects, and water conservation improvements on residential, commercial, industrial, and other real properties at the request of the owner;

(2) The programs described in subdivision (1) of this section will benefit the citizens of this state by:

(A) Decreasing the cost of providing funds to participating citizens and lowering the aggregate issuance and servicing costs of loans; and

(B) Making funds available to rural communities throughout the state that might not otherwise create and finance the programs described in subdivision (1) of this section; and

(3) The programs described in subdivision (1) of this section will further the public purpose of:

(A) Creating jobs and stimulating the state's economy;

(B) Generating significant economic development through the investment of the proceeds of loans in local communities, including increased sales tax revenue;

(C) Protecting participating citizens from the financial impact of the rising cost of electricity produced from nonrenewable fuels;

(D) Providing positive cash flow in which the costs of the improvements are lower than the energy savings on an average monthly basis;

(E) Providing the citizens of this state with informed choices and additional options for financing improvements that may not otherwise be available;

(F) Increasing the value of the improved real property for participating citizens;

(G) Improving the state's air quality and conserving natural resources, including water;

(H) Attracting manufacturing facilities and related jobs to the state; and

(I) Promoting energy independence and security for the state and the nation.

8-15-104. Immunity.

(a) The powers and duties of a district conferred by this chapter are public and governmental functions exercised for a public purpose and for matters of public necessity.

(b) The district and its personnel are immune from suit in tort for the performance of its duties under this chapter unless immunity from tort is expressly waived in writing.

8-15-105. Authority to create.

(a) A governmental entity legally authorized to issue general revenue bonds may create a district by adoption of an ordinance.

(b) A combination of governmental entities may create a district by each governmental entity:

(1) Adopting an ordinance that provides for the governmental entity's participation in the district; and

(2) Entering into a joint agreement with one (1) or more other participating governmental entities.

(c) This section shall not limit additional governmental entities from becoming members of the district under § 8-15-106.

8-15-106. Membership in an existing district.

(a) To become a member of an existing district, the governing body of a governmental entity shall:

(1) Adopt an ordinance that provides for the participation of the governmental entity in the district; and

(2) Enter into an agreement with the other participating members of the district.

(b) The agreement between members of a district shall establish the terms and conditions of the operation of the district with the limitations provided in this chapter.

8-15-107. Board of directors.

(a) A district created under this chapter shall be operated and controlled by a board of directors.

(b) The board of directors shall manage and control each district, including without limitation the operations, business, and affairs of the district.

(c) The board of directors shall be solely responsible for selecting the chair of the board of directors and establishing the procedures by which the board of directors shall operate.

(d) A director shall not receive compensation in any form for his or her services as a director.

(e) Each director shall be entitled to reimbursement by the district for any necessary expenditures incurred in connection with the performance of his or her general duties as a director.

8-15-108. Membership on the board of directors.

(a) The board of directors of a district shall consist of at least seven (7) directors.

(b) The board of directors shall include:

(1) For a statewide district, the members specified in the agreement establishing the district;

(2) For a district composed of a combination of one (1) or more counties and one (1) or more cities:

(A) The county judge or his or her designated representative of each county that is a member of the district;

(B) The mayor or his or her designated representative of each city that is a member of the district; and

(C) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivisions (b)(2)(A) and (B) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed;

(3) For a district composed of one (1) or more counties:

(A) The county judge or his or her designated representative of each county that is a member of the district; and

(B) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivision (b)(3)(A) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed; and

(4) For a district composed of one (1) or more cities:

(A) The mayor or his or her designated representative of each city that is a member of the district; and

(B) If the number of directors is fewer than seven (7) after fulfilling the requirements of subdivision (b)(4)(A) of this section, additional members shall be appointed as specified in the agreement establishing the district until a total of seven (7) directors has been appointed.

(c) The designated representative of a county judge or mayor under subsection (b) of this section shall be a qualified elector of the jurisdiction that the designated representative is appointed to represent.

8-15-109. Terms of directors.

(a) A director who is a public official may serve on the board of directors of a district during his or her term of office as the county judge or mayor of a member of a district.

(b) A director who is the designated representative of the mayor or county judge of a member of the district serves at the pleasure of the mayor of the city or the county judge of the county that is a member of the district.

8-15-110. District boards of directors – Meetings.

(a) The board of directors of a district shall hold quarterly meetings and special meetings, as needed, in the courthouse or other location within the district.

(b) The time and place of the quarterly meetings shall be on file in the office of the district board of directors.

8-15-111. District boards of directors – Powers and duties.

(a) The board of directors of a district may:

- (1) Issue revenue bonds on behalf of the district;
- (2) Make and adopt all necessary bylaws for its organization and operation;
- (3) Elect officers and employ personnel necessary for its operation;
- (4) Operate, maintain, expand, and fund a PACE project;
- (5) Apply for, receive, and spend grants for any purpose under this chapter;
- (6) Enter into agreements and contracts on behalf of the district;
- (7) Receive property or funds by gift or donation for the finance and support of the district;
- (8) Reimburse a governmental entity for expenses incurred in performing a service for the district;
- (9) Assign assessments to a private lending institution; and
- (10) Do all things necessary or appropriate to carry out the powers expressly granted or duties expressly imposed under this chapter.

(b) The board of directors shall:

(1) Allow a commission of:

(A) One and five-tenths percent (1.5%) for the extension of district assessments by the county assessor or county clerk;

(B) One and five-tenths percent (1.5%) for the collection of district assessments by the county collector; and

(C) One-eighth percent (0.125%) for services of a county treasurer in disbursing the moneys collected for district assessments; and

(2) Adopt rules consistent with this chapter or with other legislation that in its judgment may be necessary for the property enforcement of this chapter.

8-15-112. Reporting requirement – Collection of assessments.

(a)(1)(A) By March 1 of each year or upon the creation of a district that uses or intends to use the county collector for collection of district assessments shall file an annual report with the county clerk in any county in which a portion of the district is located.

(B) The annual report required under this section shall be available for inspection and copying by assessed landowners in the district.

(C) The county clerk shall not charge any costs or fees for filing the annual report required under this section.

(D) The district shall deliver a filed copy of the annual report required under this section to the county collector within five (5) days of filing.

(2) The annual report required under this section shall contain the following information as of December 31 of the current calendar year:

(A) A list of contracts, identity of the parties to the contracts, and obligations of the district;

(B) Any indebtedness, including bonded indebtedness, and the reason for the indebtedness, including the following:

(i) The stated payout or maturity date of the indebtedness, if any; and

(ii) The total existing delinquent assessments and the party responsible for the collection;

(C) Identification of each member of the board of directors of the district and each member's contact information;

(D) The date, time, and location for any scheduled meeting

of the district for the following year;

(E) The contact information for the district assessor;

(F) Information concerning to whom the county treasurer is to pay district assessments;

(G) An explanation of the applicable statutory penalties, interest, and costs;

(H) The method used to compute district assessments; and

(I) A statement itemizing the income and expenditures of the district, including a statement of fund and account activity for the district.

(b)(1) A district that does not comply with subsection (a) of this section commits a violation punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.

(2) A fine recovered under subdivision (b)(1) of this section shall be deposited into the county clerk's cost fund.

(c)(1) On or before December 31, the district shall file its list of special assessments for the following calendar year with the county clerk.

(2)(A) After filing the list of special assessments under subdivision (c)(1) of this section, the district shall deliver a copy of the filed list of special assessments to the preparer of the tax books.

(B) If the county collector is not the designated preparer of the tax books, the district shall deliver a copy of the filed list of special assessments to the county collector.

(3) The list of special assessments required under subdivision (c)(1) of this section shall contain:

(A) A list of each parcel with an assessment levied against it within the district; and

(B) The contact information for the district assessor.

(4) The list of special assessments required under subdivision (c)(1) of this section shall not include assessments on parcels that otherwise would not appear on the tax books for the following year.

(5) After the December 31 deadline to file the list of special assessments required under subdivision (c)(1) of this section, the county collector may reject an assessment submitted by the district for inclusion in the list of special assessments.

(d)(1) After the district files the list of special assessments

required under subsection (c), the county collector shall collect the assessments at the same time the county collector collects the other taxes on the property.

(2) The county collector shall pay the funds collected under subdivision (d)(1) of this section to the county treasurer at the same time that the county collector pays all other taxes to the county treasurer.

(3) The county treasurer shall distribute the funds received under subdivision (d)(2) of this section to the district in the same manner as he or she distributes funds to other tax entities.

8-15-113. Financing projects.

(a) A district may establish a PACE program to provide loans for the initial acquisition and installation of energy efficiency improvements, renewable energy projects, and water conservation improvements with consenting real property owners of existing real property and new construction.

(b)(1) The district may authorize by resolution the issuance of bonds or the execution of a contract with a governmental entity or a private entity to provide the loans under subsection (a) of this section.

(2) The resolution shall include without limitation the following:

(A) The type of renewable energy project, water conservation improvement, or energy efficiency improvement for which the loan may be offered;

(B) The proposed arrangement for the loan program, including without limitation:

(i) A statement concerning the source of funding that will be used to pay for work performed under the loan contract;

(ii) The interest rate and time period during which contracting real property owners would repay the loan; and

(iii) The method of apportioning all or any portion of the costs incidental to the financing, administration, and collection of the arrangement among the consenting real property owners and the governmental entity;

(C) A minimum and maximum aggregate dollar amount that may be financed per property;

(D)(i) A method for prioritizing requests from real property owners for financing if the requests appear likely to exceed the authorization amount of the loan program.

(ii) Priority shall be given to those requests from real property owners that meet the eligibility requirements on a first come, first served basis.

(E) Identification of a local official authorized to enter into loan contracts on behalf of the district; and

(F) A draft contract specifying the terms and conditions proposed by the district.

(c)(1) The district may combine the loan payment required by the loan contract with the billing for the real property tax assessment for the real property where the renewable energy project, water conservation improvement, or the energy efficiency improvement is installed.

(2) The district may establish the order in which a loan payment will be applied to the different charges.

(3) The district may not combine the billing for a loan payment required by a contract authorized under this section with a billing of another county or political subdivision unless the county or political subdivision has given its consent by a resolution or ordinance.

(d) The district shall offer private lending institutions the opportunity to participate in local loan programs established under this section.

(e)(1)(A) In order to secure a loan authorized under this section, the district may place a lien equal in value to the loan against any real property where the renewable energy project, water conservation improvement, or the energy efficiency improvement is installed.

(B) The lien shall attach to the real property when it is filed in the county recorder's office for record.

(2)(A)(i) The priority of the lien created under this chapter is determined based on the date of filing of the lien.

(ii) Except as provided in subdivision (e)(2)(A)(iii) of this section, the priority of the lien shall be determined in the same manner as the priority for other real property tax and assessment liens.

(iii) A lien created under this chapter shall be

subordinate to any real or personal property tax liens.

(iv) A district shall discharge the lien created under this chapter upon full payment of the lien.

(B) If the real property is sold, the lien shall stay attached to the real property, and the loan created under this chapter will be owed by the new real property owner.

(C) If the real property enters into default or foreclosure:

(i) Payment of the assessment shall not be sought from a member of the district who does not own the real property that entered into default or foreclosure;

(ii) Repayment of the assessment shall not be accelerated automatically; and

(iii) The balance of the assessment shall be repaid according to the terms of the agreed-upon schedule.

(3) The district may bundle or package the loans for transfer to private lenders in a manner that would allow the liens to remain in full force to secure the loans.

(f)(1) Before the enactment of an ordinance under this section, a public hearing shall be held at which interested persons may object to or inquire about the proposed loan program or any of its particulars.

(2) The public hearing shall be advertised one (1) time per week for two (2) consecutive weeks in a newspaper of general circulation in the district.

8-15-114. Program guidelines.

The board of directors, together with any third-party administrator it may select, shall determine:

(1) The guidelines of the PACE program, including without limitation that:

(A) The base energy performance evaluation shall be completed by a certified and qualified energy evaluation professional to determine existing energy use and options for improved energy efficiency;

(B) The approved improvements create a positive cash flow;

(C) Work shall be performed by qualified and certified contractors in the field of energy efficiency and methods of renewable energy

installation;

(D) Performance testing and verification shall be performed by a qualified professional after the work is completed;

(E) Adequate consumer protections are in place; and

(F) The applicable underwriting standards for the participants in the program are established;

(2) The qualifications of the vendors performing installations under this chapter;

(3) The mechanisms by which the district will remit the received special assessment payments and any cost reimbursement; and

(4) Any other matters necessary to implement and administer the PACE program.

8-15-115. Payment by special assessments.

The credit and taxing power of the State of Arkansas will not be pledged for the debt evidenced by the bonds, which will be payable solely from the revenues received from the special assessments on the participants' real property under this chapter.

8-15-116. Bonds.

(a) A district may:

(1) Issue bonds to provide the PACE program loans authorized by this chapter; and

(2) Create a debt reserve fund of legally available moneys from nonstate sources as partial security for the bonds.

(b) Bonds issued under this chapter and income from the bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(c) Bonds issued under this chapter shall:

(1)(A) Be authorized by a resolution of the board of directors.

(B) The authorizing bond resolution may contain any terms, covenants, and conditions that the board of directors deems to be reasonable and desirable; and

(2) Have all of the qualities of and shall be deemed to be negotiable instruments under the laws of the State of Arkansas.

8-15-117. Sale.

The bonds may be sold in such a manner, either at public or private sale, and upon such terms as the board of directors of a district shall determine to be reasonable and expedient for effectuating the purposes of this chapter.

8-15-118. Revolving fund.

(a) A district may maintain a revolving fund to be held in trust by a banking institution chosen by the board of directors separate from any other funds and administered by the board of directors.

(b) A district may transfer into its revolving fund money from any permissible source, including:

- (1) Bond revenues;
- (2) Contributions; and
- (3) Loans.

8-15-119. Notice to mortgage lender.

At least thirty (30) days before the execution of an agreement with a district, an owner shall provide written notice to each mortgage lender holding a lien on the owner's property of the owner's application to participate in a PACE program.

/s/D. Johnson

APPROVED: 04/11/2013