

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 2026

By: Representatives Sabin, Beck, J. Williams, Leding, D. Whitaker, Tucker
By: Senator L. Eads

For An Act To Be Entitled

AN ACT TO AMEND THE PROPERTY ASSESSED CLEAN ENERGY
ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE PROPERTY ASSESSED CLEAN
ENERGY ACT.

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

SECTION 1. Arkansas Code §§ 8-15-102 and 8-15-103 are amended to read
as follows:

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;~~ “Assessment” means an annually recurring amount identified
within an assessment obligation that may be pledged as cash flow and
collateral in support of repayment of a district’s financial obligation;

(2) “Assessment contract” means a written agreement between a
district and an owner relating to a PACE improvement on or benefitting an
owner’s property, under which an assessment is charged to repay an assessment
obligation between a district and an owner as part of a PACE program;

(3) “Assessment obligation” means an assessment and other
indebtedness and obligations, including without limitation any



reimbursements, penalties, interest, or other charges, to be paid to a district by an owner under an assessment contract;

~~(2)~~ (4) “District” means a property assessed energy improvement district established in this state by law under this chapter subject to the general improvement district law contained in Title 14, Subtitle 5, of the Arkansas Code, to the extent a conflict does not exist with this chapter, for the express purpose of managing the PACE program;

(5) “Financial obligation” means a bond, note, lease purchase agreement, certificate of participation, or other financial evidence of indebtedness authorized by this chapter, the laws of this state, or the Arkansas Constitution;

~~(3)~~ (6) “Governmental entity” means a municipality, county, combination of cities or counties, or both, or statewide district;

(7) “Lending entity” means an individual, partnership, association, corporation, or other legal entity not prohibited by Arkansas law or federal law from lending money, either without security or upon the security the lending entity may require;

~~(4)~~ (8) “Owner” means an individual, partnership, association, corporation, or other legal entity, that is recognized by law, and has with title or interest in any real property on which a PACE project is located or that benefits from a PACE project;

(9) “PACE improvement” means any combination of energy efficiency improvements, water conservation improvements, or renewable energy projects that is district-approved to become a PACE project and is located on or benefits an owner’s real property;

~~(5)~~ (10) “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 under this chapter by which an owner may finance or refinance a PACE project through financial obligations, the repayment of which are secured and collateralized by assessments; and

(11) “PACE project” means district-approved PACE improvements located on residential, commercial, industrial, or agricultural real property that, at the request of the owner, are financed or refinanced through a financial obligation rendered by a lending entity, the repayment of which is secured and collateralized by assessments; and

~~(6)~~ (12) "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~~ PACE projects;

(2) The PACE 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~~ financial obligations; and

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

(3) The ~~programs~~ PACE projects 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 PACE 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 PACE 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.

SECTION 2. Arkansas Code § 8-15-105, concerning the authority to create a district under the Property Assessed Clean Energy Act, is amended to add an additional subsection to read as follows:

(d)(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 PACE program or any of the PACE program's particulars.

(2) Before a public hearing is held under subdivision (d)(1) of this section, notice of the public hearing shall be advertised at least one (1) time per week for two (2) consecutive weeks in a newspaper of general circulation in the proposed district.

SECTION 3. Arkansas Code § 8-15-107(a), concerning the board of directors of a property assessed energy improvement district, is amended to read as follows:

(a) A district created under this chapter shall be ~~operated~~:

(1) A body politic and corporate with all powers necessary or convenient to carry out and effectuate this chapter, including without limitation the power to contract and be contracted with and sue and be sued; and

(2) Operated and controlled by a board of directors.

SECTION 4. Arkansas Code § 8-15-111 is amended to read as follows:
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 and appropriate 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, modify, and terminate agreements and contracts on behalf of the district, including without limitation assessment contracts, and take all actions necessary and appropriate to perform a district's obligations under an agreement or contract 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, contracts, and other assessment obligations to a private lending institution entity in connection with the issuance of any bond or otherwise;

(10) Create, maintain, supplement, modify, and operate PACE programs;

(11) Sue and be sued;

(12) Under a PACE project:

(A) Charge and collect assessments and other assessment obligations under assessment contracts with owners; and

(B) Record the assessment contracts, which creates the assessment and other assessment obligations to evidence a lien on the property subject to the assessment contract and secures payment and performance in full of the assessment obligations under the assessment contract, so long as any of the assessment obligations remain payable under the assessment contracts; and

~~(10)~~ (13) 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 either:

(1) Allow a commission of:

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

(B) One and five-tenths percent (1.5%) for the collection of district assessments for each assessment contract 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 or~~

(2) Adopt ~~rules~~ a contractual fee arrangement consistent with this chapter or with other legislation that in ~~its~~ the board of directors' judgment ~~may be~~ is necessary for the proper enforcement of this chapter, including without limitation negotiating commissions lower than the commission stated in subdivision (b)(1) of this section for services rendered by a private entity that is assigned the authority to collect assessments and disbursing the moneys collected.

SECTION 5. Arkansas Code §§ 8-15-112 – 8-15-116 are amended to read as follows:

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~~ assessment obligations, a district 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, including without limitation all assessment contracts on which assessments or other assessment obligations remain unpaid;

(B) Any indebtedness of the district, other than assessment contracts, 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~~ assessment obligations collected by the county collector;

(G) An explanation of the applicable statutory penalties, interest, and costs included in assessment obligations;

(H) The method used to compute district ~~assessments~~ assessment obligations; 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, a district shall file its list of ~~special~~ assessments and the assessment obligations due for the following calendar year with the county clerk.

(2)(A) After filing the list of ~~special~~ assessments and assessment obligations under subdivision (c)(1) of this section, the district shall deliver a copy of the filed list of ~~special~~ assessments and assessment obligations 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 and assessment obligations to the county collector.

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

(A) ~~A list of each~~ Each parcel ~~with an~~ subject to unpaid

assessment ~~levied~~ obligations against it within the district; and

(B) The contact information for the district assessor.

(4) The list of ~~special~~ assessments and assessment obligations 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 and assessment obligations 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 and assessment obligations.

(d)(1) ~~After~~ Unless privately collected under § 8-15-111, after the district files the list of ~~special~~ assessments and assessment obligations required under ~~subsection (e) subdivision (c)(1)~~ of this section, the county collector shall collect ~~the assessments~~ assessment obligations at the same time the county collector collects the other taxes on the ~~property subject~~ properties.

(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.

(e) Except as provided in § 8-15-111, the county shall not charge a fee, expense, or other charge to the district for performing the county's obligations under this section.

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 (a)(1) A district may authorize approve 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~~

terms and conditions contractually agreed upon by a lending entity, consenting owner, and district for a financial obligation by the lending entity and the owner's execution of an assignable assessment contract and assessment obligation to fund the costs, expenses, and reimbursements associated with the initial acquisition, construction, and installation of PACE improvements on existing real property or new construction.

(2) ~~The~~ A resolution under subdivision (a)(1) of this section shall include without limitation the following:

(A) ~~The type of renewable energy project, water conservation improvement, or energy efficiency improvement~~ A description of the PACE improvements for which the ~~loan~~ financial obligations may be offered; and

(B) The proposed arrangement ~~for the loan program~~ by which financial obligations issued to fund a PACE project shall be repaid, including without limitation:

(i) A statement concerning the financial obligation source of funding that will be used to pay for ~~work performed under the loan contract~~ a PACE project entered into under an assessment contract for repayment of the principal and interest on financial obligations, including any applicable terms and conditions of the assessment obligation;

(ii) The interest rate and time period during which ~~contracting real property owners would repay the loan~~ repayment of the financial obligation would occur; 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 that has the authority to collect assessments; and

(iv) The form of the assessment contract, specifying the terms and conditions of the assessment obligations of the owners' proposed assessment obligations, to be agreed to by the district.

~~(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.~~

~~(e)(1) (b) The district may combine the loan payment~~ include the assessment obligations ~~required by the loan contract~~ assessment contracts 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 benefitting from the PACE project or upon which the PACE project is located, as provided in § 8-15-112.

~~(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) (c)(1)(A) The district shall offer private lending institutions the opportunity to participate in local loan programs established under this section.~~ An assessment contract under this chapter may include provisions for the payment of penalties and interest for delinquent assessment obligations and the payment of fees, costs, and expenses for the collection of any delinquent assessment obligations, including without limitation the delinquent penalties provided under § 14-90-909.

(B) Assessment obligations, including without limitation penalties and interest on delinquent assessment obligations, and the fees, costs, and expenses for the collection of delinquent assessment obligations, shall be secured and collateralized by a foreclosable lien that:

(i) Is created upon the filing of the underlying assessment contract;

(ii) Is charged against the real property upon which the PACE project, subject to an assessment contract, is located or the real property that is otherwise benefited by the PACE project;

(iii) Shall remain until the assessment obligations are paid; and

(iv) Is entitled to preference and priority over all prior and subsequent mortgages, judgments, executions, encumbrances, or liens, whenever created, except liens for general ad valorem real property taxes, upon recording of the assessment contract describing the secured assessment obligations in the county recorder's office of the county in which an owner's real estate that is subject to an assessment contract is located.

~~(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 (C) So long as the underlying assessment obligations remain unpaid, the lien created under subdivision (c)(1)(B) of this section runs with the real property, and if the real property is sold, the lien shall stay remain attached to the real property, and the loan assessment obligations created under the assessment obligation provided for in this chapter will shall be owed by the new real property owner.~~

~~(G) (D) If the real property subject to an assessment contract enters into default or foreclosure:~~

~~(i) Payment of the assessment obligations created by the assessment contract shall not be sought from a member of the district who does not own the real property subject to the assessment contract that entered into default or foreclosure;~~

~~(ii) The portion of the assessment obligations not yet due survives foreclosure of the lien provided in this subchapter and is~~

not eliminated by foreclosure of a property tax lien;

(iii) Repayment of the assessment assessments and other assessment obligations not due upon default or foreclosure shall not be accelerated automatically; and

~~(iii)~~ (iv) The balance of the assessment obligation shall be repaid according to the terms of the agreed-upon schedule and other provisions of the assessment contract; and

(v) Except as otherwise expressly provided in this chapter, the district may elect to enforce its lien for delinquent assessment obligations under this section in the same manner as delinquent assessments and installments of assessments are collected under § 14-90-101 et seq.

~~(3)~~ (2) The district may bundle or package the loans its assessment obligations for transfer to private lenders in a manner that would allow the liens to remain in full force to secure the loans assessment obligations.

~~(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 of a district, 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 PACE improvements shall 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~~ shall be in place;
and

(F) The applicable underwriting standards for the participants in the PACE program ~~are~~ shall be established;

(G) A minimum and maximum aggregate dollar amount that may be financed for each PACE project shall be established;

(H)(i) A method shall be established for prioritizing PACE program requests if the requests appear likely to exceed the amount authorized for the PACE program.

(ii) Priority shall be given to PACE program requests that meet the eligibility requirements on a first-come, first-served basis;

(I) A district official authorized to enter into assessment contracts on behalf of the district shall be identified; and

(J) The district shall offer lending entities the opportunity to finance PACE projects under this chapter;

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

(3) The mechanisms by which the district ~~will~~ shall remit ~~the received special~~ assessment obligation 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~~ assessment obligations.

The credit and taxing power of the State of Arkansas shall not be pledged for the debt evidenced by the ~~bonds~~ financial obligations of any district, which are payable solely from the revenues received by the districts from the ~~special assessments on the participants' assessment obligations on owners' real property and other funds provided to secure the payment of financial obligations~~ assessment obligations on owners' real property and other funds provided to secure the payment of financial obligations under this chapter.

8-15-116. ~~Bonds~~ Financial obligations.

(a) A district may:

(1) Issue financial obligations, including bonds, notes,

certificates of participation, and other evidence of indebtedness, to provide the PACE program loans projects as 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~~ Financial obligations issued under this chapter and income from ~~the~~ any bonds, including any profit made on the sale or transfer of the bonds, are exempt from taxation in this state.

(c) ~~Bonds~~ Financial obligations issued under this chapter shall:

(1)(A) ~~Be authorized by a~~ As stated in the resolution of the board of directors of a district authorizing the issuance of the financial obligations:

(i) Bear interest at the rate or rates determined by the board of directors;

(ii) Mature at the time or times determined by the board of directors;

(iii) Be payable as to principal, any premium, and interest at the places within or without the state and in the form, whether bearer or registered, determined by the board of directors;

(iv) Be subject to any exchange privileges; and

(v) Have such other details as may be stated in the resolution.

(B) ~~The authorizing bond resolution may contain any terms, covenants, and conditions that the board of directors deems to be reasonable and desirable~~ resolution of the board of directors authorizing the issuance of financial obligations may provide for the execution and delivery of:

(i) A trust indenture or like instrument by the board of directors of a district securing the financial obligations; and

(ii) Other writings pertaining to the financial obligations; and

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

(d) Financial obligations may be executed by the manual or facsimile signatures of the members of the board of directors of a district.

SECTION 6. Arkansas Code § 8-15-118 is amended to read as follows:

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 of the district separate from any other funds and administered by the board of directors of the district.

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

(1) Bond revenues;

(2) Investment earnings;

(3) Contributions; and

~~(3)~~ (4) Loans and leases, including without limitation payments and prepayments of principal, interest, and rental payments.