

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE NO. 2 FOR

HOUSE BILL NOS. 1692, 1209, 1405, 1499, 1535 & 1811

95TH GENERAL ASSEMBLY

4506S.18T

2010

AN ACT

To repeal sections 193.145, 193.265, 208.010, 214.160, 214.270, 214.276, 214.277, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, 214.550, 288.034, 327.031, 327.041, 327.272, 327.351, 327.411, 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, 339.503, 339.710, 452.340, 452.430, 454.475, 454.517, 454.557, 454.1003, 488.429, 537.296, 563.011, 563.031, 571.030, 571.070, 571.104, and 571.107, RSMo, and to enact in lieu thereof one-hundred four new sections relating to real estate, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 193.145, 193.265, 208.010, 214.160, 214.270, 214.276, 214.277, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, 214.550, 288.034, 327.031, 327.041, 327.272, 327.351, 327.411, 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, 339.503, 339.710, 452.340, 452.430, 454.475, 454.517, 454.557, 454.1003, 488.429, 537.296, 563.011, 563.031, 571.030, 571.070, 571.104, and 571.107, RSMo, are repealed and one-hundred four new sections enacted in lieu thereof, to be known as sections 60.670, 67.2800, 67.2805, 67.2810, 67.2815, 67.2820, 67.2825, 67.2830, 67.2835, 171.185, 193.145, 193.265, 208.010, 214.160, 214.270, 214.276, 214.277, 214.282, 214.283, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.389, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, 214.550, 246.310, 288.034, 306.532, 327.031, 327.041, 327.272, 327.351, 327.411, 339.010, 339.020, 339.030, 339.040, 339.080, 339.110, 339.160, 339.170, 339.503, 339.710, 339.845, 339.1100, 339.1105, 339.1110, 339.1115, 339.1120, 339.1125, 339.1130, 339.1135, 339.1140, 339.1145, 339.1150, 339.1155, 339.1160, 339.1170, 339.1175, 339.1180, 339.1185, 339.1190, 339.1200, 339.1205, 339.1210, 339.1215, 339.1220, 339.1230, 339.1235, 339.1240, 429.016, 441.645, 452.340, 452.430, 454.475, 454.517, 454.557, 454.1003, 488.429, 493.055, 537.296, 563.011, 563.031, 571.030, 571.070, 571.104, and 571.107 to read as follows:

67.2800. 1. Sections 67.2800 to 67.2835 shall be known and may be cited as the "Property Assessment Clean Energy Act".

2. As used in sections 67.2800 to 67.2835, the following words and terms shall mean:

(1) "Assessment contract", a contract entered into between a clean energy development board and a property owner under which the property owner agrees to pay an annual assessment for a period of up to twenty years in exchange for financing of an energy efficiency improvement or a renewable energy improvement;

(2) "Authority", the state environmental improvement and energy resources authority established under section 260.010;

(3) "Bond", any bond, note, or similar instrument issued by or on behalf of a clean energy development board;

(4) "Clean energy conduit financing", the financing of energy efficiency improvements or renewable energy improvements for a single parcel of property or a unified development consisting of multiple adjoining parcels of property under section 67.2825;

(5) "Clean energy development board", a board formed by one or more municipalities under section 67.2810;

(6) "Energy efficiency improvement", any acquisition, installation, or modification on or of publicly or privately owned property designed to reduce the energy consumption of such property, including but not limited to:

(a) Insulation in walls, roofs, attics, floors, foundations, and heating and cooling distribution systems;

(b) Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective windows and doors, and other window and door improvements designed to reduce energy consumption;

(c) Automatic energy control systems;

(d) Heating, ventilating, or air conditioning distribution system modifications and replacements;

(e) Caulking and weatherstripping;

(f) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building unless the increase in illumination is necessary to conform to applicable state or local building codes;

(g) Energy recovery systems; and

(h) Daylighting systems;

(7) "Municipality", any county, city, or incorporated town or village of this state;

(8) "Project", any energy efficiency improvement or renewable energy improvement;

(9) "Property assessed clean energy local finance fund", a fund that may be established by the authority for the purpose of making loans to clean energy development boards to establish and maintain property assessed clean energy programs;

(10) "Property assessed clean energy program", a program established by a clean energy development board to finance energy efficiency improvements or renewable energy improvements under section 67.2820;

(11) "Renewable energy improvement", any acquisition and installation of a fixture, product, system, device, or combination thereof on publicly or privately owned property that produces energy from renewable resources, including, but not limited to photovoltaic systems, solar thermal systems, wind systems, biomass systems, or geothermal systems.

3. All projects undertaken under sections 67.2800 to 67.2835 are subject to the applicable municipality's ordinances and regulations, including, but not limited to those ordinances and regulations concerning zoning, subdivision, building, fire safety, and historic or architectural review.

67.2805. 1. The authority may, as needed, promulgate administrative rules and regulations relating to the following:

(1) Guidelines and specifications for administering the property assessed clean energy local finance fund; and

(2) Any clarification to the definitions of energy efficiency improvement and renewable energy improvement as the authority may determine is necessary or advisable.

2. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2010, shall be invalid and void.

67.2810. 1. One or more municipalities may form clean energy development boards for the purpose of exercising the powers described in sections 67.2800 to 67.2835. Each clean energy development board shall consist of not less than three members, as set forth in the ordinance or order establishing the clean energy development board. Members shall serve terms as set forth in the ordinance or order establishing the clean energy development board and shall be appointed:

(1) If only one municipality is participating in the clean energy development board, by the chief elected officer of the municipality with the consent of the governing body of the municipality; or

(2) If more than one municipality is participating, in a manner agreed to by all participating municipalities.

2. A clean energy development board shall be a political subdivision of the state and shall have all powers necessary and convenient to carry out and effectuate the provisions of sections 67.2800 to 67.2835, including, but not limited to the following:

(1) To adopt, amend, and repeal bylaws, which are not inconsistent with sections 67.2800 to 67.2835;

(2) To adopt an official seal;

(3) To sue and be sued;

(4) To make and enter into contracts and other instruments with public and private entities;

(5) To accept grants, guarantees, and donations of property, labor, services, and other things of value from any public or private source;

(6) To employ or contract for such managerial, legal, technical, clerical, accounting, or other assistance it deems advisable;

(7) To levy and collect special assessments under an assessment contract with a property owner and to record such special assessments as a lien on the property;

(8) To borrow money from any public or private source and issue bonds and provide security for the repayment of the same;

(9) To finance a project under an assessment contract;

(10) To collect reasonable fees and charges in connection with making and servicing assessment contracts and in connection with any technical, consultative, or project assistance services offered;

(11) To invest any funds not required for immediate disbursement in obligations of the state of Missouri or of the United States or any agency or instrumentality thereof, or in bank certificates of deposit; provided, however, the limitations on investments provided in this subdivision shall not apply to proceeds acquired from the sale of bonds which are held by a corporate trustee; and

(12) To take whatever actions necessary to participate in and administer a clean energy conduit financing or a property assessed clean energy program.

3. No later than July first of each year, the clean energy development board shall file with each municipality that participated in the formation of the clean energy development board and with the director of the department of natural resources, an annual report for the preceding calendar year that includes:

(1) A brief description of each project financed by the clean energy development board during the

preceding calendar year, which shall include the physical address of the property, the name or names of the property owner, an itemized list of the costs of the project, and the name of any contractors used to complete the project;

(2) The amount of assessments due and the amount collected during the preceding calendar year;

(3) The amount of clean energy development board administrative costs incurred during the preceding calendar year;

(4) The estimated cumulative energy savings resulting from all energy efficiency improvements financed during the preceding calendar year; and

(5) The estimated cumulative energy produced by all renewable energy improvements financed during the preceding calendar year.

4. No lawsuit to set aside the formation of a clean energy development board or to otherwise question the proceedings related thereto shall be brought after the expiration of sixty days from the effective date of the ordinance or order creating the clean energy development board. No lawsuit to set aside the approval of a project, an assessment contract, or a special assessment levied by a clean energy development board, or to otherwise question the proceedings related thereto shall be brought after the expiration of sixty days from the date that the assessment contract is executed.

67.2815. 1. A clean energy development board shall not enter into an assessment contract or levy or collect a special assessment for a project without making a finding that there are sufficient resources to complete the project and that the estimated economic benefit expected from the project during the financing period is equal to or greater than the cost of the project.

2. An assessment contract shall be executed by the clean energy development board and the benefitted property owner or property owners and shall provide:

(1) A description of the project, including the estimated cost of the project and details on how the

project will either reduce energy consumption or create energy from renewable sources;

(2) A mechanism for:

(a) Verifying the final costs of the project upon its completion; and

(b) Ensuring that any amounts advanced or otherwise paid by the clean energy development board toward costs of the project will not exceed the final cost of the project;

(3) An acknowledgment by the property owner that the property owner has received or will receive a special benefit by financing a project through the clean energy development board that equals or exceeds the total assessments due under the assessment contract;

(4) An agreement by the property owner to pay annual special assessments for a period not to exceed twenty years, as specified in the assessment contract;

(5) A statement that the obligations set forth in the assessment contract, including the obligation to pay annual special assessments, are a covenant that shall run with the land and be obligations upon future owners of such property; and

(6) An acknowledgment that no subdivision of property subject to the assessment contract shall be valid unless the assessment contract or an amendment thereof divides the total annual special assessment due between the newly subdivided parcels pro rata to the special benefit realized by each subdivided parcel.

3. The total special assessments levied against a property under an assessment contract shall not exceed the sum of the cost of the project, including any required energy audits and inspections, or portion thereof financed through the participation in a property assessed clean energy program or clean energy conduit financing, including the costs of any audits or inspections required by the clean energy development board, plus such administration fees, interest, and other financing costs reasonably required by the clean energy development board.

4. The clean energy development board shall provide a copy of each signed assessment contract to

the local county assessor and county collector and shall cause a copy of such assessment contract to be recorded in the real estate records of the county recorder of deeds.

5. Special assessments agreed to under an assessment contract shall be a lien on the property against which it is assessed on behalf of the applicable clean energy development board from the date that each annual assessment under the assessment contract becomes due. Such special assessments shall be collected by the county collector in the same manner and with the same priority as ad valorem real property taxes. Once collected, the county collector shall pay over such special assessment revenues to the clean energy development board in the same manner in which revenues from ad valorem real property taxes are paid to other taxing districts. Such special assessments shall be collected as provided in this subsection from all subsequent property owners, including the state and all political subdivisions thereof, for the term of the assessment contract.

6. Any clean energy development board that contracts for outside administrative services to provide financing origination for a project shall offer the right of first refusal to enter into such a contract to a federally insured depository institution with a physical presence in Missouri upon the same terms and conditions as would otherwise be approved by the clean energy development board. Such right of first refusal shall not be applicable to the origination of any transaction that involves the issuance of bonds by the clean energy development board.

67.2820. 1. Any clean energy development board may establish a property assessed clean energy program to finance energy efficiency improvements or renewable energy improvements. A property assessed clean energy program shall consist of a program whereby a property owner may apply to a clean energy development board to finance the costs of a project through annual special assessments levied under an assessment contract.

2. A clean energy development board may establish application requirements and criteria for project financing approval as it deems necessary to effectively administer such program and ration available funding among projects, including but not

limited to requiring projects to meet certain energy efficiency standards.

3. Clean energy development boards shall ensure that any property owner approved by the board to participate in a property assessed clean energy program or clean energy conduit financing under sections 67.2800 to 67.2835 shall have good credit worthiness or shall otherwise be considered a low risk for failure to meet the obligations of the program or conduit financing.

4. A clean energy development board may require an initial energy audit conducted by a qualified home energy auditor as defined in subdivision (4) of subsection 1 of section 640.153 as a prerequisite to project financing through a property assessed clean energy program as well as inspections to verify project completion.

67.2825. 1. In lieu of financing a project through a property assessed clean energy program, a clean energy development board may seek to finance any number of projects to be installed within a single parcel of property or within a unified development consisting of multiple adjoining parcels of property by participating in a clean energy conduit financing.

2. A clean energy conduit financing shall consist of the issuance of bonds under section 67.2830 payable from the special assessment revenues collected under an assessment contract with the property owner participating in the clean energy conduit financing and any other revenues pledged thereto.

67.2830. 1. A clean energy development board may issue bonds payable from special assessment revenues generated by assessment contracts and any other revenues pledged thereto. The bonds shall be authorized by resolution of the clean energy development board, shall bear such date or dates, and shall mature at such time or times as the resolution shall specify, provided that the term of any bonds issued for a clean energy conduit financing shall not exceed twenty years. The bonds shall be in such denomination, bear interest at such rate, be in such form, be issued in such manner, be payable in such place or places, and be subject to redemption as such resolution may provide. Notwithstanding any provision to the contrary under this section, issuance

of the bonds shall conform to the requirements of subsection 1 of section 108.170.

2. Any bonds issued under this section shall not constitute an indebtedness of the state or any municipality. Neither the state nor any municipality shall be liable on such bonds, and the form of such bonds shall contain a statement to such effect.

67.2835. The director of the department of economic development is authorized to allocate the state's residual share, or any portion thereof, of the national qualified energy conservation bond limitation under Section 54D of the Internal Revenue Code of 1986, as amended, for any purposes described therein to the authority, any clean energy development board, the state, any political subdivision, instrumentality, or other body corporate and politic.