

1 State of Arkansas *As Engrossed: S3/5/13 S3/14/13 S3/20/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 640

4

5 By: Senators D. Johnson, J. Woods

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

7 *D. Whitaker*

8

9

For An Act To Be Entitled

10

AN ACT TO CREATE JOBS, RETAIN WEALTH, AND GROW

11

ARKANSAS'S ECONOMY BY ENABLING PROPERTY ASSESSED

12

CLEAN ENERGY FINANCING; TO AUTHORIZE THE

13

ESTABLISHMENT OF ENERGY IMPROVEMENT DISTRICTS TO FUND

14

LOANS FOR ENERGY EFFICIENCY IMPROVEMENTS, RENEWABLE

15

ENERGY PROJECTS, AND WATER CONSERVATION IMPROVEMENTS;

16

AND FOR OTHER PURPOSES.

17

18

19

Subtitle

20

TO AUTHORIZE THE ESTABLISHMENT OF ENERGY

21

IMPROVEMENT DISTRICTS TO FUND LOANS FOR

22

ENERGY EFFICIENCY IMPROVEMENTS, RENEWABLE

23

ENERGY PROJECTS, AND WATER CONSERVATION

24

IMPROVEMENTS.

25

26

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

28

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

31

Chapter 15 – Energy Efficient Facilities

32

33

8-15-101. Title.

34

This chapter shall be known and may be cited as the “Property Assessed

35

Clean Energy Act”.

36



1 8-15-102. Definitions.

2 As used in this chapter:

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

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

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

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

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

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

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

23
24 8-15-103. Legislative findings.

25 The General Assembly finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25
26 8-15-104. Immunity.

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

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

33
34 8-15-105. Authority to create.

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

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

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

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

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

9
10 8-15-106. Membership in an existing district.

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

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

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

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

20
21 8-15-107. Board of directors.

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

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

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

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

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

35
36 8-15-108. Membership on the board of directors.

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

3 (b) The board of directors shall include:

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

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

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

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

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

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

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

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

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

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

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

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

36

1 8-15-109. Terms of directors.

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

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

9
10 8-15-110. District boards of directors – Meetings.

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

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

16
17 8-15-111. District boards of directors – Powers and duties.

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

19 (1) Issue revenue bonds on behalf of the district;

20 (2) Make and adopt all necessary bylaws for its organization and
21 operation;

22 (3) Elect officers and employ personnel necessary for its
23 operation;

24 (4) Operate, maintain, expand, and fund a PACE project;

25 (5) Apply for, receive, and spend grants for any purpose under
26 this chapter;

27 (6) Enter into agreements and contracts on behalf of the
28 district;

29 (7) Receive property or funds by gift or donation for the
30 finance and support of the district;

31 (8) Reimburse a governmental entity for expenses incurred in
32 performing a service for the district;

33 (9) Assign assessments to a private lending institution; and

34 (10) Do all things necessary or appropriate to carry out the
35 powers expressly granted or duties expressly imposed under this chapter.

36 (b) The board of directors shall:

1 (1) Allow a commission of:

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

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

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

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

11
12 8-15-112. Reporting requirement – Collection of assessments.

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

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

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

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

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

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

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

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

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

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

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

1 of the district for the following year;

2 (E) The contact information for the district assessor;

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

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

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

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

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

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

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

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

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

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

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

28 (B) The contact information for the district assessor.

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

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

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

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

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

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

10
11 8-15-113. Financing projects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (iii) A lien created under this chapter shall be

1 subordinate to any real or personal property tax liens.

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

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

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

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

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

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

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

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

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

25
26 8-15-114. Program guidelines.

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

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

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

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

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

1 installation;

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

4 (E) Adequate consumer protections are in place; and

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

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

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

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

13
14 8-15-115. Payment by special assessments.

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

19
20 8-15-116. Bonds.

21 (a) A district may:

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

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

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

29 (c) Bonds issued under this chapter shall:

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

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

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

36

1 8-15-117. Sale.

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

6
7 8-15-118. Revolving fund.

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

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

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

16
17 8-15-119. Notice to mortgage lender.

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

22
23 */s/D. Johnson*

24
25
26 **APPROVED: 04/11/2013**