

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4
5 By: Senator D. Johnson
6

A Bill

SENATE BILL 516

For An Act To Be Entitled

8 AN ACT TO GRANT THE AUTHORITY FOR THE ESTABLISHMENT
9 OF ENERGY IMPROVEMENT DISTRICTS TO FUND LOANS FOR
10 ENERGY EFFICIENCY IMPROVEMENTS AND CLEAN RENEWABLE
11 ENERGY PROJECTS ON RESIDENTIAL, COMMERCIAL,
12 INDUSTRIAL, AND OTHER PROPERTIES AT THE REQUEST OF
13 THE OWNER AND TO BE REPAID THROUGH INCLUSION WITH THE
14 REAL PROPERTY TAX ASSESSMENT; AND FOR OTHER PURPOSES.

Subtitle

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16
17
18 TO GRANT THE AUTHORITY FOR THE
19 ESTABLISHMENT OF ENERGY IMPROVEMENT
20 DISTRICTS THAT WILL FUND LOANS FOR ENERGY
21 EFFICIENCY IMPROVEMENTS AND CLEAN
22 RENEWABLE ENERGY PROJECTS.
23
24

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

26
27 SECTION 1. Arkansas Title 8 is amended to add a new chapter to read as
28 follows:

29 SUBCHAPTER 1 – ENERGY EFFICIENT HOMES

30 8-15-101. Title.

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

33
34 8-15-102. Definitions.

35 As used in this section:

36 (1)(A) “Bond” means a revenue bond or note issued under this



1 chapter.

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

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

8 (3) "Owner" means any individual, partnership, association,
 9 corporation, or organization having any title or interest in any property;

10 (4) "PACE program" means a property assessed clean energy
 11 program under which a property owner can finance an energy efficiency
 12 improvement and a clean renewable energy project on the property; and

13 (5) "Person" means any individual, partnership, corporation, or
 14 other legal entity recognized by law as having power to contract.

15
 16 8-15-103. Legislative findings.

17 The General Assembly finds that:

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

23 (2) These programs will benefit the citizens of this state by:

24 (A) Decreasing the cost of funds to participating citizens and
 25 by lowering the aggregate issuance and servicing costs of these loans; and

26 (B) Making these funds available to rural communities throughout
 27 the state that might not otherwise create and finance these programs; and

28 (3) These programs will further the public purpose of:

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

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

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

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

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

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

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

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

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

12
13 8-15-104. Immunity.

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

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

20
21 8-15-105. Authority to create.

22 (a) A single county may create a district by adoption of an ordinance.

23 (b) A combination of contiguous counties may create a district by each
24 county:

25 (1) Adopting an ordinance that provides for the county's
26 participation in the district; and

27 (2) Entering into a joint agreement with the other participating
28 county or counties.

29 (c) This section shall not limit additional contiguous counties from
30 becoming a member in the district as provided under § 8-15-106.

31
32 8-15-106. Membership in an existing district.

33 (a) To become a member of an existing district, a governing body of a
34 contiguous county to the district shall:

35 (1) Adopt an ordinance that provides for the participation of
36 the county in the district; and

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

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

6
7 8-15-107. Board of directors.

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

10 (b) A board of directors shall manage and control each district
11 created under this chapter, including without limitation the following:

12 (1) Operations;

13 (2) Business; and

14 (3) Affairs.

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

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

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

23
24 8-15-108. Membership on the board of directors.

25 (a) Unless the structure of the board of directors is otherwise
26 specified in the agreement establishing the district, the board of directors
27 of a district shall consist of no fewer than seven (7) directors as provided
28 under this section.

29 (b)(1) The board of directors shall include the county judge or his or
30 her designated representative of each county that is a member of the district
31 and the mayor or his or her designated representative of each city of the
32 first class that is within the district's boundaries.

33 (2) If the number of directors is fewer than seven (7) after
34 fulfilling the requirements of subdivision (b)(1) of this section, then
35 mayors or designated representatives of the cities of the second class that
36 are within the district are appointed to the board of directors in descending

1 order of population as determined by the last federal decennial census until
2 seven (7) directors have been appointed.

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

6 (d) If a city of the second class becomes a city of the first class
7 and is within the district boundaries, the mayor of that city or his or her
8 designated representative shall become a director.

9 (e) Membership of cities of the second class on the board of directors
10 shall be adjusted after each federal decennial census.

11
12 8-15-109. Terms of directors.

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

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

20
21 8-15-110. District boards of directors -- Meetings.

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

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

26
27 8-15-111. District boards of directors -- Powers and duties.

28 (a) The board of directors may:

29 (1) Enter into agreements and contracts and issue revenue bonds
30 with a governmental entity or a private entity on behalf of the district;

31 (2) Make and adopt all necessary bylaws for its organization and
32 operation;

33 (3) Elect officers and employ personnel necessary for its
34 operation;

35 (4) Operate, maintain, expand, or fund the PACE project;

36 (5) Apply for, receive, and spend grants for any purpose under

1 this chapter;

2 (6) Enter into agreements and contracts;

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

5 (8) Do all things necessary or appropriate to carry out the
6 powers expressly granted or duties expressly imposed under this chapter.

7 (b) The board of directors shall adopt rules consistent with this
8 chapter or with other legislation that in its judgment may be necessary for
9 the proper enforcement of this chapter, provided such rules are approved by
10 the district.

11
12 8-15-112. Financing projects.

13 (a) A district created under this chapter may establish a property
14 assessed clean energy program to provide loans for the initial acquisition
15 and installation of energy efficiency improvements and clean renewable energy
16 projects with free and willing property owners of both existing property and
17 new construction.

18 (b)(1) The district may, by resolution, authorize a revenue bond or
19 contract with a governmental entity or a private entity to provide the loans
20 under subsection (a).

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

23 (A) The kind of clean renewable energy project or energy
24 efficiency improvement for which the loan may be offered;

25 (B) The proposed arrangement for the loan program,
26 including:

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 property owners would repay the loan; and

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

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

36 (D)(i) A method for setting requests from property owners

1 for financing in priority order if the requests appear likely to exceed the
2 authorization amount of the loan program.

3 (ii) Priority shall be given to those requests from
4 property owners who meet established income or assessed property value
5 eligibility requirements;

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

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

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

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

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

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

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

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

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

31 (ii) The lien is not entitled to any special or
32 senior priority.

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

35 (B) If the property is sold, the lien will stay attached
36 to the property and the loan created under this chapter will be owed by the

1 new property owner.

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

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

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

11
12 8-15-113. Program guidelines.

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

15 (1) The guidelines of the PACE program, including without
16 limitation the applicable underwriting standards for the participants in the
17 program;

18 (2) The qualifications of the vendors performing such
19 installations;

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

22 (4) The priority of property tax payments and the special
23 assessments; and

24 (5) Such other matters necessary to implement and administer the
25 program.

26
27 8-15-114. Payment by special assessments.

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

32
33 8-15-115. Bonds.

34 (a) A district may:

35 (1) Issue revenue bonds in order to provide the PACE program
36 loans authorized by this chapter; and

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

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

6 (c) Bonds issued under this chapter shall be authorized by resolution
7 of the board of directors.

8 (d) The bonds shall have all of the qualities of and shall be deemed
9 to be negotiable instruments under the laws of the State of Arkansas.

10 (e) The authorizing bond resolution may contain any other terms,
11 covenants, and conditions that the board of directors deems to be reasonable
12 and desirable.

13
14 8-15-116. Sale.

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

18
19 8-15-117. Revolving fund.

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

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

25 (1) Bond revenue;

26 (2) Contributions;

27 (3) Loans;

28 (4) Grants; and

29 (5) Assistance from any governmental entity, private entity, or
30 person.

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