

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

*As Engrossed: S3/23/11*

# A Bill

SENATE BILL 516

5 By: Senators D. Johnson, *Elliott, Madison*  
6 By: Representatives *Leding, Webb, Lindsey, J. Edwards*  
7

## For An Act To Be Entitled

9 AN ACT TO GRANT THE AUTHORITY FOR THE ESTABLISHMENT  
10 OF ENERGY IMPROVEMENT DISTRICTS TO FUND LOANS FOR  
11 ENERGY EFFICIENCY IMPROVEMENTS AND CLEAN RENEWABLE  
12 ENERGY PROJECTS ON RESIDENTIAL, COMMERCIAL,  
13 INDUSTRIAL, AND OTHER PROPERTIES AT THE REQUEST OF  
14 THE OWNER AND TO BE REPAID THROUGH INCLUSION WITH THE  
15 REAL PROPERTY TAX ASSESSMENT; AND FOR OTHER PURPOSES.  
16

## Subtitle

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

25  
26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
27

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

30 SUBCHAPTER 1 – ENERGY EFFICIENT HOMES

31 8-15-101. Title.

32 This chapter shall be known and may be cited as the “Property Assessed  
33 Clean Energy Act”.  
34

35 8-15-102. Definitions.

36 As used in this section:



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

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

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

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

11 (4) "Owner" means any individual, partnership, association,  
12 corporation, or organization having any title or interest in any property;

13 (5) "PACE program" means a property assessed clean energy  
14 program under which a property owner can finance an energy efficiency  
15 improvement and a clean renewable energy project on the property; and

16 (6) "Person" means any individual, partnership, corporation, or  
17 other legal entity recognized by law as having power to contract.

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19 8-15-103. Legislative findings.

20 The General Assembly finds that:

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

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

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

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

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

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

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

36 (C) Protecting participating citizens from the financial impact

1 of the rising cost of electricity produced from nonrenewable fuels;

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

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

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

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

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

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

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16 8-15-104. Immunity.

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

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

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24 8-15-105. Authority to create.

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

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

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

31 (2) Entering into a joint agreement with the other participating  
32 governmental entity or governmental entities.

33 (c) This section shall not limit additional contiguous governmental  
34 entities from becoming a member of the district as provided under § 8-15-106.

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36 8-15-106. Membership in an existing district.

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

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

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

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

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11 8-15-107. Board of directors.

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

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

16 (1) Operations;

17 (2) Business; and

18 (3) Affairs.

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

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

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

27  
28 8-15-108. Membership on the board of directors.

29 (a) Unless the structure of the board of directors is otherwise  
30 specified in the agreement establishing the district, the board of directors  
31 of a district shall consist of no fewer than seven (7) directors as provided  
32 under this section.

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

1           (2) If the number of directors is fewer than seven (7) after  
2 fulfilling the requirements of subdivision (b)(1) of this section, then  
3 mayors or designated representatives of the cities of the second class that  
4 are within the district are appointed to the board of directors in descending  
5 order of population as determined by the last federal decennial census until  
6 seven (7) directors have been appointed.

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

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

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

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16           8-15-109. Terms of directors.

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

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

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25           8-15-110. District boards of directors -- Meetings.

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

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

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31           8-15-111. District boards of directors -- Powers and duties.

32           (a) The board of directors may:

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

35               (2) Make and adopt all necessary bylaws for its organization and  
36 operation;

1           (3) Elect officers and employ personnel necessary for its  
2 operation;

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

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

6           (6) Enter into agreements and contracts;

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

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

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

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16           8-15-112. Financing projects.

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

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

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

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

29                   (B) The proposed arrangement for the loan program,  
30 including:

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

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

35                           (iii) The method of apportioning all or any portion  
36 of the costs incidental to financing, administration, and collection of the

1 arrangement among the consenting property owners and the governmental entity;

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

4 (D)(i) A method for setting requests from property owners  
5 for financing in priority order if the requests appear likely to exceed the  
6 authorization amount of the loan program.

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

10 (iii) If funding is limited, then priority shall go  
11 first to residential property owners;

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

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

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

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

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

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

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

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

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

1                   (ii) The lien is not entitled to any special or  
2 senior priority.

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

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

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

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

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

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18                   8-15-113. Program guidelines.

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

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

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

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

28                   (C) Work shall be performed by qualified and certified  
29 contractors in the field of energy efficiency and methods or clean renewable  
30 energy installation;

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

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

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

36                   (2) The qualifications of the vendors performing such

1 installations;

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

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

6 (5) Such other matters necessary to implement and administer the  
7 program.

8

9 8-15-114. Payment by special assessments.

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

14

15 8-15-115. Bonds.

16 (a) A district may:

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

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

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

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

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

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

31

32 8-15-116. Sale.

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

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1 8-15-117. Revolving fund.

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

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

7 (1) Bond revenue;

8 (2) Contributions;

9 (3) Loans;

10 (4) Grants; and

11 (5) Assistance from any governmental entity, private entity, or  
12 person.

13  
14 8-15-118. Advisory panel.

15 (a) An independent advisory panel is established to review the program  
16 requirements and guidelines for all proposed districts using PACE.

17 (b) The Governor, Speaker of the House of Representatives, and  
18 President Pro Tempore of the Senate shall each appoint three (3) members to  
19 the advisory panel, one (1) from three (3) of the following areas:

20 (1) Department of Finance and Administration or other expert in  
21 bond financing;

22 (2) Arkansas Energy Office;

23 (3) Expert in energy efficiency methods or industry;

24 (4) Municipal or county government;

25 (5) Clean renewable energy industry; and

26 (6) Workforce development.

27  
28 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the  
29 General Assembly of the State of Arkansas that there exists a severe economic  
30 instability in this state; that the instability has caused serious economic  
31 distress among the citizens of our state; that utility rates continue to  
32 rise; that energy efficiency improvements and clean renewable energy projects  
33 would help fight the continued rise in utility costs and benefit the  
34 environment; that there is an abundance of business and economic development  
35 potential for making energy efficiency improvements and clean renewable  
36 energy projects; that Arkansans need help in making these improvements due to

1 the current economic climate; and that these projects would create jobs and  
2 stimulate the state's economy. Therefore, an emergency is declared to exist  
3 and this act being immediately necessary for the preservation of the public  
4 peace, health, and safety shall become effective on:

5 (1) The date of its approval by the Governor;

6 (2) If the bill is neither approved nor vetoed by the Governor,  
7 the expiration of the period of time during which the Governor may veto the  
8 bill; or

9 (3) If the bill is vetoed by the Governor and the veto is  
10 overridden, the date the last house overrides the veto.

11  
12 /s/D. Johnson  
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