

COMMERCE AND TRADE (12 PA.C.S.) - PROPERTY ASSESSED CLEAN ENERGY PROGRAM

Act of Jun. 12, 2018, P.L. 198, No. 30

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Session of 2018

No. 2018-30

SB 234

AN ACT

Amending Title 12 (Commerce and Trade) of the Pennsylvania Consolidated Statutes, authorizing assessments for energy improvements in districts designated by municipalities.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 12 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 43

PROPERTY ASSESSED CLEAN ENERGY PROGRAM

Sec.

- 4301. Purpose.
- 4302. Definitions.
- 4303. Establishment of a program.
- 4304. Notice to lien holder required for participation.
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§ 4301. Purpose.

This chapter authorizes the establishment of a property assessed clean energy program in the Commonwealth to ensure that owners of agricultural, commercial and industrial properties can obtain low-cost, long-term financing for energy efficiency, water conservation and renewable energy projects.

§ 4302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Alternative energy system." Energy generated from alternative energy sources as defined under the act of November 30, 2004 (P.L.1672, No.213), known as the Alternative Energy Portfolio Standards Act. In addition to these energy sources, programs may recognize alternative energy sources not included

in the Alternative Energy Portfolio Standards Act when approving qualified project applications.

"Assessment." A charge against the real property within a district which is levied and collected by the county or municipality that establishes the district.

"Bond." The term includes any public or private financing note, mortgage, loan, deed of trust, instrument, refunding note or other evidence of indebtedness or obligation used to finance a qualified project.

"Business." A corporation, partnership, sole proprietorship, limited liability company, business trust or other commercial entity.

"Clean energy project." A project which does any of the following:

(1) Replaces or supplements an existing energy system that utilizes nonrenewable energy with an energy system that utilizes alternative energy.

(2) Facilitates the installation of an alternative energy system in an existing building or a major renovation of a building.

(3) Facilitates the retrofit of an existing building to meet high-performance building standards.

(4) Installs equipment to facilitate or improve energy conservation or energy efficiency, including heating and cooling equipment and solar thermal equipment.

"District." An area or group of real properties within a municipality or county, designated by the municipality or county for the purpose of establishing a property assessed clean energy program.

"Financial institution." Any person who in the ordinary course of business extends credit based on a lien, mortgage or security interest in real property or an encumbrance of real property or relies upon a lien, mortgage or security interest in real property or an encumbrance of real property to secure a current, contingent or future payment obligation. The term includes, but is not limited to, the following:

(1) A bank, savings association, trust company, credit union or a subsidiary or affiliate of a bank, savings association, trust company or credit union.

(2) A person engaged in the mortgage lending business subject to or exempt from licensing under 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection).

(3) A person subject to or exempt from licensing under the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(4) A person registered as a management company or unit investment trust or treated as a business development company under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) or is excluded from registration under the Investment Company Act of 1940.

(5) An insurance company.

(6) A pension or employee health and welfare fund.

(7) An association engaged in construction or the development or improvement of real property.

(8) A condominium or cooperative association or planned community association.

(9) A Federal, State or local agency, authority or an instrumentality of a government entity that is engaged in the financing or supports the financing of real estate development or the purchase or improvement of real estate.

"Local financing." A bond provided or facilitated by a municipality, county, district, economic development corporation, related authority or any government-sponsored entity. This term does not include general obligation bonds.

"Owner financing." A bond provided by a real property owner or a third-party provider. This term may include a power purchase agreement.

"Power purchase agreement." A financial arrangement in which a third party owns, operates and maintains a permanently affixed energy generation unit for a property owner and the property owner purchases power from the third party at agreed-upon rates in the arrangement. The third party would have the ability to finance its equipment acquisitions with an assessment under a property assessed clean energy program.

"Program." A property assessed clean energy program established under this chapter.

"Property assessed clean energy program." A means of financing qualified projects in a district through an assessment.

"Qualified party." A contractor or subcontractor that meets the following standards:

(1) Possesses all technical qualifications and resources, including equipment, management, technical and craft labor personnel, and financial resources necessary to perform the contracted responsibilities, or will obtain the contracted responsibilities through the use of qualified subcontractors.

(2) Possesses all valid, current licenses, registrations or other certificates required for the contractor or its employees by Federal, State or local law necessary for the type of work required for the project.

(3) Does not have any outstanding liability to the locality in the form of tax obligations, fines or other fees, unless the contractor or subcontractor has entered into and is in compliance with a payment agreement with the locality for such taxes, fines or fees.

(4) Meets all bonding requirements, as required by applicable law or contract specifications, and all insurance requirements as required by applicable law or contract specifications, including general liability insurance, workers' compensation insurance and unemployment insurance requirements.

"Qualified project." The installation or modification of a permanent improvement fixed to real property that is a clean energy project, water conservation project or alternative energy system, which generates measurable energy savings or reductions in water usage and the installation is performed by a qualified party in a district. The term includes installation of alternative energy-generating equipment affixed to the land or building.

"Real property." Any agricultural, commercial or industrial land or building owned by an individual, partnership, limited liability corporation, corporation or nonprofit. The term does not include multifamily housing or any residential property.

"Water conservation project." A project that reduces the usage of water or increases the efficiency of water usage.

§ 4303. Establishment of a program.

The following apply:

(1) A municipality with a community or economic development department or county may establish a property assessed clean energy program by adopting an ordinance or resolution that will establish the program, define the district and provide other operational standards and guidelines, which shall include, but not be limited to, the following:

(i) Require all clean energy projects to comply with national energy efficiency standards.

(ii) Develop criteria and procedures to determine the eligibility of real property and owners for participation in a program.

(iii) Other measures as needed to satisfy the requirements of this chapter or to ensure that a program is effective, efficient and fair to property owners.

(2) A county that establishes a program must notify any municipality that may be in the district of their possible inclusion before a resolution establishing a program is approved. A municipality or county may contract with a third party to administer the program.

§ 4304. Notice to lien holder required for participation.

Before real property may be subject to an assessment under the program and begin a local financing or an owner financing of a qualified project, the following shall occur:

(1) Any financial institution holding a lien, mortgage or security interest in or other encumbrance of the real property that secures a current, future or contingent payment obligation must be given written notice of the real property owner's intention to participate in the program and acknowledge in writing to the property owner and municipality or county that established the program that they have received such notice.

(2) Any financial institution required to be given notice under paragraph (1) must provide written consent to the property owner and municipality or county that established the program that the property may participate in the program.

§ 4305. Scope of work.

(a) Requirement.--A program shall require for each proposed qualified project a scope of work, energy baseline or water usage baseline and the projected energy savings or water usage reductions in order to establish the viability of the qualified project and the projected energy savings or water usage reductions.

(b) Verification of completion.--After a qualified project is completed, the municipality or county shall obtain verification from the real property owner and from an independent professional inspector or building code official that the qualified project was properly completed.

§ 4306. Notice.

(a) Notice.--A municipality or county that establishes a program shall post online and make available to the public a notice of each qualified project financed through an assessment.

(b) Contents of notice.--The notice under subsection (a) must contain:

- (1) The legal description of the property.
- (2) The name of each property owner.
- (3) The total amount of the qualified project and a complete description of the qualified project.
- (4) The assessment needed to satisfy the bond.
- (5) A reference to the statutory assessment lien provided under this chapter.
- (6) The financing rate on the bond, the total amount of the bond financing and any financing charges associated with the bond.

§ 4307. Lien.

(a) General rule.--An assessment under this chapter, including past-due amounts and required future payments and any interest or penalties on the assessment:

(1) shall be a first and prior lien against the real property on which the assessment is imposed from the date on which the notice of contractual assessment is recorded and until the assessment, interest or penalty is satisfied;

(2) shall have the same priority status as a lien for any other tax imposed by any agency, municipality or county of the Commonwealth and shall be treated as a tax imposed by any agency, municipality or county;

(3) must be recorded with the title, including all information required under section 4306 (relating to notice), until the lien is discharged; and

(4) may be discharged, compromised or abated in the same manner as delinquent property tax obligations.

(b) Lien.--The lien runs with the land and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien. The assessment cannot be accelerated or extinguished until fully repaid.

(c) Enforcement.--The assessment lien may be enforced by the municipality or county in the same manner that a property tax lien against real property may be enforced by the municipality or county to the extent the enforcement is consistent with the laws of this Commonwealth.

(d) Delinquency charge.--Delinquent installments of the assessments incur interest and penalties in the same manner as delinquent property taxes.

(e) Costs and expenses.--A municipality or county may recover costs and expenses, including attorney fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

§ 4308. Collection of assessments.

The following apply:

(1) The governing body of a municipality or county that establishes a district is required to collect the assessments for that district using their present tax collection process and remit for payment of the local financing or owner financing.

(2) The assessment shall be made only upon the real property whose owner has executed a written agreement with the governing body agreeing to the assessment.

(3) Proceeds may only be used to fund a local financing or an owner financing and lasts only for the term of the local financing or owner financing.

§ 4309. Bonds.

(a) Issuance.--Local financing or owner financing may be used to issue bonds to finance qualified projects.

(b) Restrictions.--Bonds issued under this chapter may not be general obligations of the municipality or county.

(c) Use of proceeds.--Funds generated from the issuance of a bond may only be used for the following purposes:

(1) Design, engineering and project development costs of a qualified project.

(2) Infrastructure related to and necessary for a qualified project.

(3) Purchase and installation cost of any equipment needed for a qualified project.

(4) Payment of normal and customary issuance and closing fees of a bond.

(5) Normal and customary administrative fees necessary to continue operations of the municipal or county financing agency. The fees can include, but are not limited to, audits and application fees.

§ 4310. Joint implementation.

Any combination of municipalities or counties may agree to jointly implement or administer a program under this chapter.

Section 2. This act shall take effect in 60 days.

APPROVED--The 12th day of June, A.D. 2018.

TOM WOLF