

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 215
100TH GENERAL ASSEMBLY

0821H.03P

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 67.2800 and 67.2815, RSMo, and to enact in lieu thereof seven new sections relating to residential property assessment clean energy.

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

Section A. Sections 67.2800 and 67.2815, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 67.2800, 67.2815, 67.2816, 67.2817, 67.2818, 67.2819, and 67.2822, to read as follows:

67.2800. 1. Sections 67.2800 to 67.2815 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 **not to exceed the weighted average useful life of the qualified improvements** 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;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (5) **"Director", the director of the division of finance within the department of**
17 **insurance, financial institutions and professional registration;**

18 (6) **"Division", the division of finance within the department of insurance, financial**
19 **institutions and professional registration;**

20 (7) "Clean energy development board", a board formed by one or more municipalities
21 under section 67.2810, **also referred to as the PACE board;**

22 ~~[(6)]~~ (8) "Energy efficiency improvement", any acquisition, installation, or modification
23 on or of publicly or privately owned property designed to reduce the energy consumption of such
24 property, including but not limited to:

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

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

30 (c) Automatic energy control systems;

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

33 (e) Caulking and weatherstripping;

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

37 (g) Energy recovery systems; and

38 (h) Daylighting systems;

39 ~~[(7)]~~ (9) "Municipality", any county, city, or incorporated town or village of this state;

40 (10) **"Program administrator", an individual or entity selected by the clean energy**
41 **development board to administer the PACE program, but this term does not include an**
42 **employee of a county or municipal government assigned to a PACE board or a public**
43 **employee employed by a PACE board who is paid from appropriated general tax revenues;**

44 ~~[(8)]~~ (11) "Project", any energy efficiency improvement or renewable energy
45 improvement;

46 ~~[(9)]~~ (12) "Property assessed clean energy local finance fund", a fund that may be
47 established by the authority for the purpose of making loans to clean energy development boards
48 to establish and maintain property assessed clean energy programs;

49 ~~[(10)]~~ (13) "Property assessed clean energy program", a program established by a ~~[clean~~
50 ~~energy development]~~ **PACE board to finance energy efficiency improvements or renewable**
51 **energy improvements under section 67.2820;**

52 ~~[(11)]~~ (14) "Renewable energy improvement", any acquisition and installation of a
53 fixture, product, system, device, or combination thereof on publicly or privately owned property
54 that produces energy from renewable resources, including, but not limited to photovoltaic
55 systems, solar thermal systems, wind systems, biomass systems, or geothermal systems;

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

60 **4. Property assessed clean energy programs under sections 67.2800 to 67.2835 shall**
61 **be defined as merchandise for the purposes of chapter 407 and shall be subject to the**
62 **provisions of chapter 407.**

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

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

7 (1) A description of the project, including the estimated cost of the project and details
8 on how the project will either reduce energy consumption or create energy from renewable
9 sources;

10 (2) A mechanism for:

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

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

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

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

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

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

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

32 4. The clean energy development board shall provide a copy of each signed assessment
33 contract to the local county assessor and county collector **or city collections official, if the city**
34 **has joined a clean energy development board and the county has not**, and shall cause a copy
35 of such assessment contract to be recorded in the real estate records of the county recorder of
36 deeds.

37 5. Special assessments agreed to under an assessment contract shall be a lien on the
38 property against which it is assessed on behalf of the applicable clean energy development board
39 from the date that each annual assessment under the assessment contract becomes due. Such
40 special assessments shall be collected by the county collector, **or city collections official if the**
41 **city has joined a clean energy development board and the county has not**, in the same
42 manner and with the same priority as ad valorem real property taxes. Once collected, the county
43 collector **or city collections official** shall pay over such special assessment revenues to the clean
44 energy development board in the same manner in which revenues from ad valorem real property
45 taxes are paid to other taxing districts. Such special assessments shall be collected as provided
46 in this subsection from all subsequent property owners, including the state and all political
47 subdivisions thereof, for the term of the assessment contract.

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

67.2816. 1. This section shall apply only to a PACE board that implements or that
2 **has implemented a program for projects to improve residential properties of four or fewer**
3 **units.**

4 **2. Before July 1, 2020, any residential program administrator under contract to a**
5 **PACE board and having responsibilities to administer a program for residential properties**
6 **shall obtain a license and maintain an annual registration with the Missouri division of**
7 **finance.**

8 **3. The director may issue a referral under chapter 407 regarding any residential**
9 **program administrator or person or entity who may be acting as a residential program**
10 **administrator who fails to obtain and maintain a license and annual registration.**

11 **4. The director may establish reasonable license and annual registration fees for**
12 **any individual or company that seeks to perform the duties of a residential program**
13 **administrator for residential programs in the state of Missouri. The director may charge**
14 **an initial license fee not to exceed five hundred dollars and may also require an annual**
15 **registration fee not to exceed five hundred dollars. The license and any annual registration**
16 **shall not be transferrable. If an annual registration fee is unpaid for ninety days, the**
17 **registration shall expire and the individual or company shall be required to reapply for the**
18 **license.**

19 **5. The director shall not issue a license to a residential program administrator**
20 **unless the director makes, at a minimum, the following findings:**

21 **(1) The applicant or the applicant's executive officers have designated an individual**
22 **as a primary Missouri contact who shall have authority to communicate with the division**
23 **and its examiners and respond to examination requests;**

24 **(2) The applicant or the applicant's executive officers have never had any type of**
25 **financial services license or registration revoked in any governmental jurisdiction; except**
26 **that, a subsequent formal vacation of such revocation shall not be deemed a revocation;**

27 **(3) The applicant is in compliance with Missouri corporate registration**
28 **requirements to be in good standing and is not delinquent on any Missouri state or local**
29 **taxes or license fees; and**

30 **(4) The applicant is applying on behalf of a clean energy development board that**
31 **has properly registered with the Missouri ethics commission and the state auditor as a**
32 **valid political subdivision.**

33 **6. Residential program administrators for programs for residential properties in**
34 **the state of Missouri shall be subject to examination by the division for compliance with**
35 **the provisions of this chapter related to the administration of programs for residential**
36 **properties and particularly compliance with this section and sections 67.2817, 67.2818, and**
37 **67.2819. The division shall include in the compliance examination process and procedures**
38 **any applicable residential requirements and consumer protections established by the**
39 **federal Bureau of Consumer Financial Protection under section 307 of the Economic**
40 **Growth, Regulatory Relief and Consumer Financial Protection Act of 2010, Section 2155.**
41 **The division shall conduct an examination of each residential program administrator at**
42 **least once in twenty-four months and such other times as the director may determine. The**
43 **division shall conduct lending audits under the Truth-in-Lending Act, 15 U.S.C. 1601 et**

44 seq., as it relates to consumer loans, on a property assessed clean energy program. The
45 division shall share the results of each audit with the PACE board.

46 7. The residential program administrator shall be responsible for paying the costs
47 of examinations which the director may assess upon the completion of an exam. The
48 director may also assess all licensed residential program administrators on an annual basis
49 taking into account the relative annual volume and amount of residential projects
50 approved or the value of assessment contracts outstanding or such other factors as the
51 director determines to equitably spread the costs of the division's administrative expenses
52 incurred to maintain the licensing program and compliance examination program. The
53 division shall document the examinations and annual assessments and make the records
54 of the examinations and annual assessments available for public inspection. All license and
55 registration payments and assessments paid by a residential program administrator to the
56 division shall be credited to the division of finance fund established under section 361.170
57 and subject to the provisions thereof.

58 8. The division shall provide the residential program administrator an opportunity
59 to review each completed examination report and provide written responses to any findings
60 or recommendations of the division. The written responses, if any, shall be included in a
61 final examination report that shall be delivered to the PACE board and made available to
62 the public.

63 9. The division may refer any matter related to the conduct of a residential
64 program administrator to the applicable PACE board, and to the governing board of any
65 participating municipality or county, and to the state auditor or to the state attorney
66 general as deemed appropriate by the director. The referral to the Missouri attorney
67 general may include a referral under chapter 407.

68 10. The division may refer any consumer complaint related to the conduct of a
69 residential program administrator or contractor providing residential PACE project
70 services to the state attorney general.

67.2817. 1. This section shall apply only to residential properties of four or fewer
2 units.

3 2. A residential program administrator shall not approve, execute, submit, or
4 otherwise present for recordation any assessment contract unless the following criteria are
5 satisfied:

6 (1) The PACE assessments are assessed in equal annual installments;

7 (2) The PACE assessment contract may be paid in full at any time without
8 prepayment penalty;

9 (3) The assessment contract shall disclose applicable penalties, interest penalties,
10 or late fees under the contract and describe generally the interest and penalties imposed
11 under law for the collection of delinquent taxes. The PACE board or residential program
12 administrator shall provide a separate statement to the owner of the residential property
13 of the penalties or late fees authorized under the assessment contract and of the penalties
14 and interest penalties under the law for the applicable tax collector as of the date of the
15 assessment contract;

16 (4) The residential program administrator has confirmed that the property owner
17 is current on property taxes for the project property;

18 (5) The property that shall be subject to the assessment contract has no recorded
19 and outstanding involuntary liens in excess of one thousand dollars;

20 (6) The property owner shall not have been a party to any bankruptcy proceedings
21 within the last three years, except that the property owner may have been party to a
22 bankruptcy proceeding that was discharged or dismissed between two and seven years
23 before the application date;

24 (7) The term of the assessment contract shall not exceed the weighted average
25 useful life of the qualified improvements to which the greatest portion of funds disbursed
26 under the assessment contract is attributable, not to exceed twenty years. The residential
27 program administrator shall determine useful life for purposes of this subdivision based
28 upon credible third-party standards or certification criteria that have been established by
29 appropriate government agencies or nationally recognized standards and testing
30 organizations or as established by the authority; and

31 (8) The property owner is current on all mortgage debt on the subject property and
32 has no more than one late payment during the twelve months immediately preceding the
33 application date on any mortgage debt.

34 3. The property owner executing the PACE assessment contract shall have a
35 three-day right to cancel the qualifying improvements proposed for financing under the
36 PACE assessment contract. The three-day right shall expire on or before midnight of the
37 third business day after a property owner signs the assessment contract. The board or
38 residential program administrator shall be required to provide a printed form that is
39 presented to the property owner no later than the time of signing of the assessment
40 contract detailing the property owner's right to cancel. An electronic form may be
41 provided if the owner consents electronically to receiving an electronic form.

42 4. Prior to execution of an assessment contract, the PACE board or residential
43 program administrator shall advise the property owner in writing that any delinquent
44 assessment shall be a lien on the property subject to the assessment contract and that the

45 obligations under the PACE assessment contract continue as an obligation against the
46 improved property if the property owner sells or refinances the property and that a
47 purchaser or lender may require that before the owner may sell or refinance the property
48 that the owner may be required to pay the assessment contract in full.

49 **5. Prior to the execution of an assessment contract, the PACE board or residential**
50 **program administrator shall advise the property owner in writing that if the property**
51 **owner pays his or her property taxes and special assessments via a lender or loan servicer's**
52 **escrow program, the special assessment will cause the owner's monthly escrow**
53 **requirements to increase and increase the owner's total monthly payment to the lender or**
54 **the loan servicer. The PACE board or residential program administrator shall further**
55 **advise the property owner that if the special assessment results in an escrow shortage that**
56 **the owner will be required to pay the shortage in a lump-sum payment or catch-up the**
57 **shortage over twelve months.**

58 **6. The PACE board or residential program administrator within three days of**
59 **entering an assessment contract, shall provide any holder of a first mortgage loan a copy**
60 **of the assessment contract and a statement that includes a brief description of the project,**
61 **the cost of the project, the annual assessment that will be levied, and the number of annual**
62 **assessments. Transmittal shall be by United States mail to the holder of the first mortgage**
63 **loan of record.**

64 **7. The PACE board or residential program administrator shall maintain a public**
65 **website with current information about the PACE program as the board or residential**
66 **program administrator deems appropriate to inform consumers regarding the PACE**
67 **program. The website shall list approved contractors for the PACE program. The website**
68 **shall disclose the process for property owners or their successors to request information**
69 **about their assessment contract, the status of the assessment contract, and for all questions**
70 **including contact information to obtain a payoff amount for the release of an assessment**
71 **contract.**

72 **8. The PACE board, residential program administrator, contractor, or other third**
73 **party shall not make any representation as to the income tax deductibility of an assessment.**

2 **67.2818. 1. This section shall apply only to residential properties of four or fewer**
3 **units.**

4 **2. The PACE board or residential program administrator shall provide a disclosure**
5 **form to homeowners that shows the financing terms of the assessment contract including,**
6 **but not limited to:**

7 **(1) The total amount funded and borrowed, including the cost of the installed**
8 **improvements, the program fees, and capitalized interest, if any;**

- 8 **(2) The annual tax assessment, billing process, and payment due date;**
9 **(3) The annual payment amounts;**
10 **(4) The term of the assessment;**
11 **(5) The fixed rate of interest charged;**
12 **(6) The annual percentage rate;**
13 **(7) A payment schedule that fully amortizes the amount financed;**
14 **(8) The improvements to be installed;**
15 **(9) A statement that if the property owner sells or refinances their property that**
16 **the owner may be required by a mortgage lender or a purchaser to pay off the assessment**
17 **as a condition of refinancing or sale;**
18 **(10) A statement that no penalty shall be assessed or collected for prepayment of**
19 **the assessment;**
20 **(11) That any potential utility savings are not guaranteed, and shall not reduce the**
21 **assessment payments or total assessment amount;**
22 **(12) That the PACE annual assessment shall be collected along with property taxes**
23 **and that any taxes and annual assessment not paid on or before December thirty-first shall**
24 **result in a lien on the improved property for the unpaid taxes, unpaid annual assessment,**
25 **interest, and penalties as provided by law;**
26 **(13) That if the owner pays property taxes and insurance through his or her**
27 **mortgage payment and an escrow account, that the special assessment will cause the**
28 **owner's monthly escrow requirements to increase and increase the owner's total monthly**
29 **payment to the lender or the loan servicer and that if the special assessment results in an**
30 **escrow shortage that the owner shall be required to pay the shortage in a lump-sum**
31 **payment or catch-up the shortage over twelve months;**
32 **(14) That failure to timely pay the annual assessment and taxes will result in a tax**
33 **lien, will result in penalties and fees being assessed and added to the annual assessment and**
34 **taxes, and that if the delinquency is not paid, the property could be sold at a tax sale**
35 **resulting in issuance of a tax certificate or collector's deed to a purchaser that could result**
36 **in the property owner losing his or her home; and**
37 **(15) That the property owner should seek professional tax advice if he or she has**
38 **questions regarding tax credits related to a PACE project or the tax matters presented by**
39 **the assessment contract or financing agreement and payments thereunder.**
40 **3. The PACE board or residential program administrator shall be required to**
41 **present the disclosure form to a property owner for acknowledgment prior to the execution**
42 **of an assessment contract.**

43 **4. Before a property owner executes an assessment contract, the PACE board or**
44 **residential program administrator shall do the following:**

45 **(1) Make an oral confirmation that at least one owner of the property has a copy**
46 **of the assessment contract documents with all the key terms completed, the financing**
47 **estimate and disclosure form, and the right to cancel form with a hard copy available upon**
48 **request; and**

49 **(2) Make an oral confirmation of the key terms of the assessment contract, in plain**
50 **language, with the property owner, or to the verified authorized representative of the**
51 **owner, and shall obtain acknowledgment from the property owner or representative to**
52 **whom the oral confirmation is given.**

53 **5. The oral confirmation shall include, but is not limited to, all the following**
54 **information:**

55 **(1) The property owner has the right to have other persons present, and an inquiry**
56 **as to whether the property owner would like to exercise the right to include other**
57 **individuals. This shall occur immediately after the determination of the preferred language**
58 **of communication;**

59 **(2) The property owner is informed that they should review the assessment contract**
60 **and financing estimate and disclosure form with all other owners of the property;**

61 **(3) The qualified improvement being installed is being financed by an assessment**
62 **contract;**

63 **(4) The total estimated annual costs the property owner will have to pay under the**
64 **assessment contract, including applicable fees;**

65 **(5) The total estimated average monthly amount of funds the property owner would**
66 **have to save in order to pay the annual costs under the assessment contract, including**
67 **applicable fees;**

68 **(6) The term of the assessment contract;**

69 **(7) That payments on the assessment contract shall be made through an additional**
70 **annual assessment on the property and paid either directly to the county tax collector's**
71 **office as part of the total annual secured property tax bill, or through the property owner's**
72 **mortgage escrow account, and that if the property owner pays his or her taxes through an**
73 **escrow account, he or she should notify his or her mortgage lender to discuss adjusting his**
74 **or her monthly mortgage payment or otherwise providing additional funds to avoid a**
75 **shortage in the owner's mortgage escrow account;**

76 **(8) That the property shall be subject to a lien during the term of the assessment**
77 **contract for any delinquent assessments;**

78 **(9) That before the owner may sell or refinance the property, a purchaser or lender**
79 **may require the obligation under the assessment contract to be paid in full;**

80 **(10) That any potential utility savings are not guaranteed, and that such savings**
81 **may not offset the assessment payments or total assessment amount;**

82 **(11) That the residential program administrator and contractor do not provide tax**
83 **advice, and that the property owner should seek professional tax advice if he or she has**
84 **questions regarding tax credits related to the project the tax matters presented by the**
85 **PACE assessment or assessment contract; and**

86 **(12) The date the first payment shall be due.**

67.2819. 1. This section shall apply only to residential properties of four or fewer
2 **units.**

3 **2. The PACE board and residential program administrator shall not permit**
4 **contractors or other third parties to advertise the availability of residential assessment**
5 **contracts that are administered by the board or residential program administrator, or to**
6 **solicit property owners on behalf of the board or residential program administrator, unless**
7 **both of the following requirements are met:**

8 **(1) The contractor maintains any permits, licenses, or registrations required for**
9 **engaging in its business in the jurisdiction where it operates and maintains bond and**
10 **insurance coverage in minimum amounts determined by the PACE board or higher**
11 **amounts as required in the jurisdiction where the contractor is licensed or registered; and**

12 **(2) The PACE board or residential program administrator obtains the contractor's**
13 **written agreement that the contractor or third party shall act in accordance with chapter**
14 **407 and other applicable advertising and marketing laws and regulations.**

15 **3. The PACE board or residential program administrator shall not provide any**
16 **direct or indirect cash payment or other thing of material value to a contractor or third**
17 **party in excess of the actual price charged by that contractor or third party to the property**
18 **owner for one or more qualified improvements financed by an assessment contract.**

19 **4. The PACE board or residential program administrator shall not provide to a**
20 **contractor engaged in soliciting financing agreements on behalf the PACE board or**
21 **residential program administrator any information that discloses the maximum amount**
22 **of funds for which a property owner may be eligible for qualifying improvements or the**
23 **amount of equity in a property.**

24 **5. The PACE board or residential program administrator shall not reimburse a**
25 **contractor or third party for expenses for advertising and marketing campaigns that solely**
26 **benefit the contractor.**

27 **6. The PACE board or residential program administrator may reimburse a**
28 **contractor's bona fide and reasonable training expenses related to PACE financing,**
29 **provided that:**

30 **(1) The training expenses are actually incurred by the contractor; and**

31 **(2) The reimbursement is paid directly to the contractor, and is not paid to its sales**
32 **persons or agents.**

33 **7. The PACE board or residential program administrator shall not provide any**
34 **direct cash payment or other thing of value to a property owner explicitly conditioned**
35 **upon the property owner entering into an assessment contract. Notwithstanding the**
36 **provisions of this subsection, programs or promotions that offer reduced fees or interest**
37 **rates to property owners are not a direct cash payment or other thing of value, provided**
38 **that the reduced fee or interest rate is reflected in the assessment contract and in no**
39 **circumstance provided to the property owner as cash consideration.**

40 **8. A contractor shall not provide a different price for a project financed under this**
41 **section than the contractor would provide if paid in cash by the property owner.**

67.2822. 1. Any program administrator who fails, refuses, or neglects to comply
2 **with the provisions of sections 67.2817, 67.2818, or 67.2819 may have its license suspended**
3 **or revoked by the director of finance after a hearing before the director on an order of the**
4 **director. The order of the director shall be served on the licensee at least ten days prior to**
5 **the hearing. The order of the director shall require the program administrator to show**
6 **cause why the license should not be suspended or revoked. The order of the director shall**
7 **specify the grounds for the proposed license suspension or revocation.**

8 **2. Before taking any action under subdivision 1 of this section, whenever it shall**
9 **appear to the director that any program administrator is failing, refusing, or neglecting to**
10 **make a good faith effort to comply with the provisions of sections 67.2817, 67.2818, or**
11 **67.2819, the director may issue an order to cease and desist. The cease and desist order**
12 **may be enforceable by a civil penalty of not more than one thousand dollars per day for**
13 **each day that the neglect, failure, or refusal to comply continues. The civil penalty shall be**
14 **assessed and collected by the director. In determining the amount of the penalty, the**
15 **director shall take into account the appropriateness of the penalty with respect to the**
16 **gravity of the violation, the history of previous violations, and such other matters as justice**
17 **may require.**

18 **3. The director shall have the power to adopt and promulgate all rules and**
19 **regulations necessary to carry out the intent and purposes of sections 67.2817, 67.2818, and**
20 **67.2819. Any rule or portion of a rule, as that term is defined in section 536.010 that is**
21 **created under the authority delegated in this section shall become effective only if it**

22 **complies with and is subject to all of the provisions of chapter 536, and, if applicable,**
23 **section 536.028. This section and chapter 536 are nonseverable and if any of the powers**
24 **vested with the general assembly pursuant to chapter 536, to review, to delay the effective**
25 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
26 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2019,**
27 **shall be invalid and void.**

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