

SECOND REGULAR SESSION

SENATE BILL NO. 1037

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5263S.011

AN ACT

To repeal sections 260.035 and 260.080, RSMo, and to enact in lieu thereof eleven new sections relating to financing by municipalities for energy improvements.

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

Section A. Sections 260.035 and 260.080, RSMo, are repealed and eleven
2 new sections enacted in lieu thereof, to be known as sections 67.2800, 67.2805,
3 67.2810, 67.2815, 67.2820, 67.2825, 67.2830, 67.2835, 260.035, 260.036, and
4 260.080, to read as follows:

**67.2800. 1. Sections 67.2800 to 67.2835 shall be known and may
2 be cited as the "Property Assessment Clean Energy Act".**

**3 2. As used in sections 67.2800 to 67.2835, the following words and
4 terms shall mean:**

**5 (1) "Assessment contract", a contract entered into between a
6 clean energy development board and a property owner under which the
7 property owner agrees to pay an annual assessment for a period of up
8 to twenty years in exchange for financing of an energy efficiency
9 improvement or a renewable energy improvement;**

**10 (2) "Authority", the state environmental improvement and energy
11 resources authority established under section 260.010.**

**12 (3) "Bond", any bond, note, or other similar instrument issued by
13 or on behalf of a clean energy development board;**

**14 (4) "Clean energy conduit financing", the financing of energy
15 efficiency improvements or renewable energy improvements for a
16 single parcel of property or a unified development consisting of
17 multiple adjoining parcels of property under section 67.2825;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 (5) "Clean energy development board", a board formed by one or
19 more municipalities under section 67.2810;

20 (6) "Director", the director of the department of economic
21 development;

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

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

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

31 (c) Automatic energy control systems;

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

34 (e) Caulking and weatherstripping;

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

39 (g) Energy recovery systems; and

40 (h) Daylighting systems;

41 (8) "Municipality", any county, city, or incorporated town or
42 village of this state;

43 (9) "Project", any energy efficiency improvement or renewable
44 energy improvement;

45 (10) "Property assessed clean energy local finance fund", the fund
46 established by the authority under section 260.036 for the purpose of
47 making loans to clean energy development boards to establish and
48 maintain property assessed clean energy programs;

49 (11) "Property assessed clean energy program", a program
50 established by a clean energy development board to finance energy
51 efficiency improvements or renewable energy improvements under
52 section 67.2820;

53 (12) "Renewable energy improvement", any acquisition and

54 installation of a fixture, product, system, device, or combination thereof
55 on publicly or privately owned property that produces energy from
56 renewable resources, including, but not limited to photovoltaic systems,
57 solar thermal systems, wind systems, biomass systems, or geothermal
58 systems.

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

67.2805. 1. The authority may, as needed, promulgate
2 administrative rules and regulations relating to the following:

3 (1) Guidelines and specifications for administering the property
4 assessed clean energy local finance fund;

5 (2) The form of the annual report required by subsection 3 of
6 section 67.2810; and

7 (3) Any clarification to the definitions of energy efficiency
8 improvement and renewable energy improvement as the authority may
9 determine is necessary or advisable.

10 2. Any rule or portion of a rule, as that term is defined in section
11 536.010, that is created under the authority delegated in this section
12 shall become effective only if it complies with and is subject to all of
13 the provisions of chapter 536 and, if applicable, section 536.028. This
14 section and chapter 536 are nonseverable and if any of the powers
15 vested with the general assembly under chapter 536 to review, to delay
16 the effective date, or to disapprove and annul a rule are subsequently
17 held unconstitutional, then the grant of rulemaking authority and any
18 rule proposed or adopted after August 28, 2010, shall be invalid and
19 void.

67.2810. 1. One or more municipalities may form clean energy
2 development boards for the purpose of exercising the powers described
3 in sections 67.2800 to 67.2835. Each clean energy development board
4 shall consist of not less than three members, as set forth in the
5 ordinance or order establishing the clean energy development
6 board. Members shall serve terms as set forth in the ordinance or
7 order establishing the clean energy development board and shall be

8 **appointed:**

9 (1) **If only one municipality is participating in the clean energy**
10 **development board, by the chief elected officer of the municipality with**
11 **the consent of the governing body of the municipality; or**

12 (2) **If more than one municipality is participating, in a manner**
13 **agreed to by all participating municipalities.**

14 **2. A clean energy development board shall be a separate body**
15 **politic and corporate and shall have all powers necessary and**
16 **convenient to carry out and effectuate the provisions of sections**
17 **67.2800 to 68.2835, including, but not limited to the following:**

18 (1) **To adopt, amend, and repeal bylaws, which are not**
19 **inconsistent with sections 67.2800 to 68.2835;**

20 (2) **To adopt an official seal;**

21 (3) **To sue and be sued;**

22 (4) **To make and enter into contracts and other instruments with**
23 **public and private entities;**

24 (5) **To accept grants, guarantees, and donations of property,**
25 **labor, services, and other things of value from any public or private**
26 **source;**

27 (6) **To employ or contract for such managerial, legal, technical,**
28 **clerical, accounting, or other assistance it deems advisable;**

29 (7) **To levy and collect special assessments under an assessment**
30 **contract with a property owner and to record such special assessments**
31 **as a lien on the property;**

32 (8) **To borrow money from any public or private source and issue**
33 **bonds and provide security for the repayment of the same;**

34 (9) **To finance a project under an assessment contract;**

35 (10) **To collect reasonable fees and charges in connection with**
36 **making and servicing assessment contracts and in connection with any**
37 **technical, consultative, or project assistance services offered;**

38 (11) **To invest any funds not required for immediate**
39 **disbursement in obligations of the state of Missouri or of the United**
40 **States or any agency or instrumentality thereof, or in bank certificates**
41 **of deposit; provided, however, the limitations on investments provided**
42 **in this subdivision shall not apply to proceeds acquired from the sale**
43 **of bonds which are held by a corporate trustee; and**

44 **(12) To take whatever actions necessary to participate in and**
45 **administer a clean energy conduit financing or a property assessed**
46 **clean energy program.**

47 **3. No later than July first of each year, the clean energy**
48 **development board shall file with the authority and with each**
49 **municipality that participated in the formation of the clean energy**
50 **development board, an annual report for the preceding calendar year**
51 **that includes:**

52 **(1) A brief description of each project financed by the clean**
53 **energy development board during the preceding calendar year;**

54 **(2) The amount of assessments due and the amount collected**
55 **during such year;**

56 **(3) The amount of clean energy development board**
57 **administrative costs incurred;**

58 **(4) The estimated cumulative energy savings resulting from all**
59 **energy efficiency improvements financed during the year and to date;**

60 **(5) The estimated cumulative energy produced by all renewable**
61 **energy improvements financed during the year and to date; and**

62 **(6) Any other financial information required by the authority's**
63 **rules and regulations.**

64 **4. No lawsuit to set aside the formation of a clean energy**
65 **development board or to otherwise question the proceedings related**
66 **thereto shall be brought after the expiration of sixty days from the**
67 **effective date of the ordinance creating the clean energy development**
68 **board. No lawsuit to set aside the approval of a project, an assessment**
69 **contract, or a special assessment levied under thereto, or to otherwise**
70 **question the proceedings related thereto shall be brought after the**
71 **expiration of sixty days from the date that the assessment contract is**
72 **executed.**

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

7 **2. An assessment contract shall be executed by the clean energy**

8 development board and the benefitted property owner or property
9 owners and shall provide:

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

13 (2) A mechanism for:

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

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

19 (3) An acknowledgment by the property owner that the property
20 owner has received a special benefit by financing a project through the
21 clean energy development board and an agreement by such property
22 owner to pay an annual special assessment equal to the amount of total
23 special assessments permitted by this section, amortized over a period
24 not to exceed twenty years;

25 (4) A distribution of assessment amounts among all parcels of
26 real property subject to the assessment contract;

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

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

36 3. The total special assessments levied against a property under
37 an assessment contract shall not exceed the sum of the cost of the
38 project, including any required energy audits and inspections, or
39 portion thereof financed through the participation in a property
40 assessed clean energy program or clean energy conduit financing,
41 including the costs of any audits or inspections required by the clean
42 energy development board, plus such administration fees, interest, and
43 other financing costs reasonably required by the clean energy

44 **development board.**

45 **4. Upon execution of an assessment contract, the clean energy**
46 **development board shall provide a copy of such assessment contract to**
47 **the local county assessor and county collector and cause a copy of such**
48 **assessment contract to be recorded in the files of the county recorder**
49 **of deeds.**

50 **5. Special assessments agreed to under an assessment contract**
51 **shall be a lien on the property against which it is assessed on behalf of**
52 **the applicable clean energy development board from the date that each**
53 **annual assessment under the assessment contract becomes due. Such**
54 **special assessments shall be collected by the county collector in the**
55 **same manner and with the same priority as other ad valorem real**
56 **property taxes. Once collected, the county collector shall pay over such**
57 **special assessment revenues to the clean energy development board in**
58 **the same manner in which revenues from ad valorem real property**
59 **taxes are paid to other taxing districts. Such special assessments shall**
60 **be collected as provided in this subsection from all subsequent**
61 **property owners, including the state and all political subdivisions**
62 **thereof, for the term of the assessment contract.**

67.2820. 1. Any clean energy development board may establish
2 **a property assessed clean energy program to finance energy efficiency**
3 **improvements or renewable energy improvements. A property assessed**
4 **clean energy program shall consist of a program whereby a property**
5 **owner may apply to a clean energy development board to finance the**
6 **costs of a project through annual special assessments levied under an**
7 **assessment contract.**

8 **2. A clean energy development board may establish application**
9 **requirements and criteria for project financing approval as it deems**
10 **necessary to effectively administer such program and ration available**
11 **funding among projects, including but not limited to requiring projects**
12 **to meet certain energy efficiency standards.**

13 **3. A clean energy development board may require an initial**
14 **energy audit as a prerequisite to project financing through a property**
15 **assessed clean energy program as well as inspections to verify project**
16 **completion.**

67.2825. 1. In lieu of financing a project through a property

2 assessed clean energy program, a clean energy development board may
3 seek to finance any number of projects to be installed within a single
4 parcel of property or within a unified development consisting of
5 multiple adjoining parcels of property by participating in a clean
6 energy conduit financing.

7 2. A clean energy conduit financing shall consist of the issuance
8 of bonds under section 67.2830 payable from the special assessment
9 revenues collected under an assessment contract with the property
10 owner participating in the clean energy conduit financing and any
11 other revenues pledged thereto.

67.2830. 1. A clean energy development board may issue bonds
2 payable from special assessment revenues generated by assessment
3 contracts and any other revenues pledged thereto. The bonds shall be
4 authorized by resolution of the clean energy development board, shall
5 bear such date or dates, and shall mature at such time or times as the
6 resolution shall specify, provided that the term of any bonds issued for
7 a clean energy conduit financing shall not exceed twenty years. The
8 bonds shall be in such denomination, bear interest at such rate, be in
9 such form, be issued in such manner, be payable in such place or
10 places, and be subject to redemption as such resolution may
11 provide. Notwithstanding any provision to the contrary under this
12 section, issuance of the bonds shall conform to the requirements of
13 subsection 1 of section 108.170.

14 2. Any bonds issued under this section shall not constitute an
15 indebtedness of the state or any municipality. Neither the state nor
16 any municipality shall be liable on such bonds, and the form of such
17 bonds shall contain a statement to such effect.

67.2835. The director of the department of economic development
2 is authorized to allocate the state's residual share, or any portion
3 thereof, of the national qualified energy conservation bond limitation
4 under Section 54D of the Internal Revenue Code of 1986, as amended,
5 for any purposes described therein to the authority, any clean energy
6 development board, the state, any political subdivision, instrumentality,
7 or other body corporate and politic.

260.035. 1. The authority is hereby granted and may exercise all powers
2 necessary or appropriate to carry out and effectuate its purposes pursuant to the

3 provisions of sections 260.005 to 260.125, including, but not limited to, the
4 following:

5 (1) To adopt bylaws and rules after having held public hearings thereon
6 for the regulation of its affairs and the conduct of its business;

7 (2) To adopt an official seal;

8 (3) To maintain a principal office and such other offices within the state
9 as it may designate;

10 (4) To sue and be sued;

11 (5) To make and execute leases, contracts, releases, compromises and
12 other instruments necessary or convenient for the exercise of its powers or to
13 carry out its purposes;

14 (6) To acquire, construct, reconstruct, enlarge, improve, furnish, equip,
15 maintain, repair, operate, lease, finance and sell equipment, structures, systems
16 and projects and to lease the same to any private person, firm, or corporation, or
17 to any public body, political subdivision or municipal corporation. Any such lease
18 may provide for the construction of the project by the lessee;

19 (7) To issue bonds and notes as hereinafter provided and to make,
20 purchase, or participate in the purchase of loans or municipal obligations and to
21 guarantee loans to finance the acquisition, construction, reconstruction,
22 enlargement, improvement, furnishing, equipping, maintaining, repairing,
23 operating or leasing of a project **or to fund the property assessed clean**
24 **energy local finance fund established under section 260.036;**

25 (8) To invest any funds not required for immediate disbursement in
26 obligations of the state of Missouri or of the United States or any agency or
27 instrumentality thereof, or in bank certificates of deposit; provided, however, the
28 foregoing limitations on investments shall not apply to proceeds acquired from
29 the sale of bonds or notes which are held by a corporate trustee pursuant to
30 section 260.060;

31 (9) To acquire by gift or purchase, hold and dispose of real and personal
32 property in the exercise of its powers and the performance of its duties hereunder;

33 (10) To employ managers and other employees and retain or contract with
34 architects, engineers, accountants, financial consultants, attorneys and such other
35 persons, firms or corporations who are necessary in its judgment to carry out its
36 duties, and to fix the compensation thereof;

37 (11) To receive and accept appropriations, bequests, gifts and grants and
38 to utilize or dispose of the same to carry out its purposes pursuant to the

39 provisions of sections 260.005 to 260.125;

40 (12) To engage in research and development with respect to pollution
41 control facilities and solid waste or sewage disposal facilities, and water facilities,
42 resource recovery facilities and the development of energy resources;

43 (13) To collect rentals, fees and other charges in connection with its
44 services or for the use of any project hereunder;

45 (14) To sell at private sale any of its property or projects to any private
46 person, firm or corporation, or to any public body, political subdivision or
47 municipal corporation on such terms as it deems advisable, including the right
48 to receive for such sale the note or notes of any such person to whom the sale is
49 made. Any such sale shall provide for payments adequate to pay the principal
50 of and interest and premiums, if any, on the bonds or notes issued to finance such
51 project or portion thereof. Any such sale may provide for the construction of the
52 project by the purchaser of the project;

53 (15) To make, purchase or participate in the purchase of loans to finance
54 the development and marketing of:

55 (a) Means of energy production utilizing energy sources other than fossil
56 or nuclear fuel, including, but not limited to, wind, water, solar, biomass, solid
57 waste, and other renewable energy resource technologies;

58 (b) Fossil fuels and recycled fossil fuels which are indigenous energy
59 resources produced in the state of Missouri, including coal, heavy oil, and tar
60 sands; [and]

61 (c) Synthetic fuels produced in the state of Missouri; **and**

62 **(d) Property assessed clean energy programs established by**
63 **clean energy development boards under section 67.2820, provided such**
64 **loans are funded from the property assessed clean energy local finance**
65 **fund established under section 260.036;**

66 (16) To insure any loan, the funds of which are to be used for the
67 development and marketing of energy resources as authorized by sections 260.005
68 to 260.125;

69 (17) To make temporary loans, with or without interest, but with such
70 security for repayment as the authority deems reasonably necessary and
71 practicable, to defray development costs of energy resource development projects;

72 (18) To collect reasonable fees and charges in connection with making and
73 servicing its loans, notes, bonds and obligations, commitments, and other
74 evidences of indebtedness made, issued or entered into to develop energy

75 resources, and in connection with providing technical, consultative and project
76 assistance services in the area of energy development. Such fees and charges
77 shall be limited to the amounts required to pay the costs of the authority,
78 including operating and administrative expenses, and reasonable allowance for
79 losses which may be incurred;

80 (19) To enter into agreements or other transactions with any federal or
81 state agency, any person and any domestic or foreign partnership, corporation,
82 association, or organization to carry out the provisions of sections 260.005 to
83 260.125;

84 (20) To sell, at public or private sale, any mortgage and any real or
85 personal property subject to that mortgage, negotiable instrument, or obligation
86 securing any loan;

87 (21) To procure insurance against any loss in connection with its property
88 in such amounts, and from such insurers, as may be necessary or desirable;

89 (22) To consent to the modification of the rate of interest, time of payment
90 for any installment of principal or interest, or any other terms, of any loan, loan
91 commitment, temporary loan, contract, or agreement made directly by the
92 authority;

93 (23) To make and publish rules and regulations concerning its lending,
94 insurance of loans, and temporary lending to defray development costs, along
95 with such other rules and regulations as are necessary to effectuate its purposes.
96 No rule or portion of a rule promulgated under the authority of sections 260.005
97 to 260.125 shall become effective unless it has been promulgated pursuant to the
98 provisions of section 536.024, RSMo;

99 (24) To borrow money to carry out and effectuate its purpose in the area
100 of energy resource development and to issue its negotiable bonds or notes as
101 evidence of any such borrowing in such principal amounts and upon such terms
102 as shall be determined by the authority, and to secure such bonds or notes by the
103 pledge of revenues, mortgages, or notes of others as authorized by sections
104 260.005 to 260.125.

105 2. The authority shall develop a hazardous waste facility if the study
106 required in section 260.037 demonstrates that a facility is economically
107 feasible. The facility, which shall not include a hazardous waste landfill, may be
108 operated by any eligible party as specified in this section. The authority shall
109 begin development of the facility by July 1, 1985.

260.036. 1. The authority is hereby directed to establish a fund

2 designated as the "Property Assessed Clean Energy Local Finance
3 Fund" whereby the authority shall, subject to available funds, loan
4 funds to clean energy development boards to establish and operate
5 property assessed clean energy programs under sections 67.2800 to
6 67.2835. The state treasurer shall be custodian of the fund and may
7 approve disbursements from the fund in accordance with sections
8 30.170 and 30.180. Upon appropriation, money in the fund shall be used
9 solely for the administration of sections 67.2800 to
10 67.2835. Notwithstanding the provisions of section 33.080 to the
11 contrary, any moneys remaining in the fund at the end of the biennium
12 shall not revert to the credit of the general revenue fund. The state
13 treasurer shall invest moneys in the fund in the same manner as other
14 funds are invested. Any interest and moneys earned on such
15 investments shall be credited to the fund.

16 2. The property assessed clean energy local finance fund shall be
17 funded from:

18 (1) Any grants, contributions, or other funds received by the
19 authority from the federal government or any other source for the
20 purpose of establishing or operating a property assessed clean energy
21 program;

22 (2) The proceeds of any revenue bonds or other obligations
23 issued by the authority for the purpose of funding the property
24 assessed clean energy local finance fund;

25 (3) The revenues received from loan agreements entered into
26 between the authority and participating clean energy development
27 boards; and

28 (4) Any other available funds so designated by the authority.

29 3. Subject to available funding, clean energy development boards
30 may apply to the authority for financing to establish and maintain
31 property assessed clean energy programs. If approved, the authority
32 and the clean energy development board shall enter into a loan
33 agreement and any other documentation necessary for the clean energy
34 development board to pledge the special assessment revenues collected
35 under assessment contracts, as defined in section 67.2800, entered into
36 as part of the property assessed clean energy program, less any
37 administrative or financing costs retained by the clean energy

38 development board, to the authority.

260.080. No part of the funds of the authority shall inure to the benefit
2 of or be distributable to its members or other private persons except that the
3 authority is authorized and empowered to pay reasonable compensation for
4 services rendered as herein provided for **and authorized to establish and**
5 **operate the property assessed clean energy local finance fund under**
6 **section 260.036 and to make, purchase, or participate in the purchase**
7 **of loans to finance the development and marketing of property assessed**
8 **clean energy programs under paragraph (d) of subdivision (15) of**
9 **section 260.035.**

Unofficial ✓

Bill

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