

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 234 Session of 2017

INTRODUCED BY BLAKE, RESCHENTHALER, SABATINA, SCHWANK, FONTANA, SCAVELLO, BREWSTER, COSTA, YUDICHAK, MCGARRIGLE, LEACH, HAYWOOD, RAFFERTY, TARTAGLIONE, HUGHES, BOSCOLA, McILHINNEY, KILLION, BROWNE, TOMLINSON, GREENLEAF, BARTOLOTTA, LAUGHLIN, VOGEL, FARNESE, DINNIMAN, STREET, ARGALL AND MENSCH, JANUARY 31, 2017

SENATOR BROWNE, APPROPRIATIONS, RE-REPORTED AS AMENDED, JANUARY 29, 2018

AN ACT

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

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

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

8 CHAPTER 43

9 PROPERTY ASSESSED CLEAN ENERGY PROGRAM

10 Sec.

11 4301. Purpose.

12 4302. Definitions.

13 4303. Establishment of a program.

14 4304. Notice to mortgage holder required for participation.

15 4305. Scope of work.

16 4306. Notice.

1 4307. Lien.

2 4308. Collection of assessments.

3 4309. Bonds.

4 4310. Joint implementation.

5 § 4301. Purpose.

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

11 § 4302. Definitions.

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

15 "Alternative energy system." Energy generated from  
16 alternative energy sources as defined under the act of November  
17 30, 2004 (P.L.1672, No.213), known as the Alternative Energy  
18 Portfolio Standards Act. In addition to these energy sources,  
19 programs may recognize alternative energy sources not included  
20 in the Alternative Energy Portfolio Standards Act when approving  
21 qualified project applications.

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

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

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

1 entity.

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

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

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

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

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

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

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

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

29 (2) A person engaged in the mortgage lending business  
30 subject to, or exempt from licensing under 7 Pa.C.S. Ch. 61

1 (relating to mortgage loan industry licensing and consumer  
2 protection).

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

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

11 (5) An insurance company.

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

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

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

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

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

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

28 "Power purchase agreement." A financial arrangement in which  
29 a third party owns, operates and maintains a permanently affixed  
30 energy generation unit for a property owner and the property

1 owner purchases power from the third party at agreed-upon rates  
2 in the arrangement. The third party would have the ability to  
3 finance its equipment acquisitions with an assessment under a  
4 property assessed clean energy program.

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

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

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

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

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

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

27 (4) Meets all bonding requirements, as required by  
28 applicable law or contract specifications, and all insurance  
29 requirements as required by applicable law or contract  
30 specifications, including general liability insurance,

1 workers' compensation insurance and unemployment insurance  
2 requirements.

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

11 "Real property." Any agricultural, commercial or industrial  
12 land or building owned by an individual, partnership, limited  
13 liability corporation, corporation or nonprofit. The term does  
14 not include ~~multi-family~~ MULTIFAMILY housing or any residential <--  
15 property.

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

18 § 4303. Establishment of a program.

19 The following apply:

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

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

29 (ii) Develop criteria and procedures to determine  
30 the eligibility of real property and owners for

1 participation in a program.

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

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

10 § 4304. Notice to lien holder required for participation.

11 Before a real property can establish MAY BE SUBJECT TO an <--  
12 assessment under the program and begin a local financing or an  
13 owner financing of a qualified project, the following shall  
14 occur:

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

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

28 § 4305. Scope of work.

29 (a) Requirement.--A program shall require for each proposed  
30 qualified project a scope of work, energy baseline or water

1 usage baseline and the projected energy savings or water usage  
2 reductions in order to establish the viability of the qualified  
3 project and the projected energy savings or water usage  
4 reductions.

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

10 § 4306. Notice.

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

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

16 (1) The legal description of the property.

17 (2) The name of each property owner.

18 (3) The total amount of the qualified project and a  
19 complete description of the qualified project.

20 (4) The assessment needed to satisfy the bond.

21 (5) A reference to the statutory assessment lien  
22 provided under this chapter.

23 (6) The financing rate on the bond, the total amount of  
24 the bond financing and any financing charges associated with  
25 the bond.

26 § 4307. Lien.

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

30 (1) shall be a first and prior lien against the real



1 property on which the assessment is imposed from the date on  
2 which the notice of contractual assessment is recorded and  
3 until the assessment, interest or penalty is satisfied;

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

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

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

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

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

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

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

30 § 4308. Collection of assessments.

1       The following apply:

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

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

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

12 § 4309. Bonds.

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

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

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

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

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

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

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

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

1 § 4310. Joint implementation.

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

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