

HOUSE BILL 464

By Staples

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 5; Title 5; Title 6 and Title 68, to enact the
"Property Assessed Clean Energy Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding the following language as a new chapter:

68-204-101. This chapter shall be known and may be cited as the "Property Assessed Clean Energy Act."

68-204-102. For the purposes of this chapter:

(1) "Commercial property" means privately owned commercial, industrial, or agricultural real property, or privately owned residential real property consisting of five (5) or more dwelling units;

(2) "Local government" means any county, metropolitan government, municipality, or other political subdivision of the state;

(3) "PACE program" or "program" means a property assessed clean energy program established under this chapter;

(4) "Qualified improvement" means a permanent improvement fixed to real property and intended to decrease or offset water or energy consumption or demand, including a product, a device, or an interacting group of products or devices that uses energy technology to generate electricity, provide thermal energy, regulate temperature, or increase energy efficiency;

(5) "Qualified project" means the installation or modification of a qualified improvement;

(6) "Region" means a PACE region designated under § 68-204-105; and

(7) "Residential property" means privately owned residential real property consisting of four (4) or less dwelling units.

68-204-103.

(a) A local government may impose an assessment to repay the financing of qualified projects on real property located in a region.

(b) An assessment may not be imposed to repay the financing of:

(1) Facilities for undeveloped lots or lots undergoing development at the time of the assessment; or

(2) The purchase or installation of products or devices not permanently fixed to real property.

(c) A local government may impose the assessment only after entering into a written contract with the record owner of the real property to be assessed and providing notice to each lienholder of record of the intent to impose the assessment.

68-204-104.

(a) A local government may establish a PACE program and exercise all powers granted under this chapter.

(b) Except as otherwise provided in subsection (g), a local government that establishes a program may enter into a written contract with a record owner of real property in a region to impose an assessment to repay the owner's financing of a qualified project on the owner's property.

(c) A local government may administer and finance a program, or may delegate the administration or financing, or both, to a qualified third party, as may be authorized by the program.

(d) If the program provides for third-party administration or financing, the local government official authorized to enter into a written contract with a property owner pursuant to subsection (b) shall also enter into a written contract with the party that

administers or finances a qualified project under the program. The contract shall require the third party to reimburse the local government for any costs associated with monitoring the program, imposing the assessment, and billing and collecting payments on behalf of the third party.

(e) If the program provides for local government financing, the written contract described in subsection (b) shall be a contract to finance the qualified project through assessments.

(f) The financing for assessments imposed may include:

(1) The cost of materials and labor necessary for the installation or modification of a qualified improvement;

(2) Permit fees;

(3) Inspection fees;

(4) Lender fees;

(5) Program application and administrative fees;

(6) Project development and engineering fees;

(7) Third-party review fees, including any applicable verification fees under § 68-204-108; and

(8) Any other fees or costs incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.

(g) A local government shall, prior to entering into a written contract pursuant to subsection (b), provide written notice to the record owner that the owner may be responsible for the payment of any remaining principal balance of the assessment upon the refinance or sale of the property. The local government shall require each record

owner to acknowledge in writing receipt of the notice prior to the execution of the contract.

68-204-105.

(a) The local government may designate an area as a region in which authorized local government officials and record owners of real property may enter into written contracts to impose assessments to repay the financing by owners of qualified projects on the owners' property and, if authorized by the local government program, to finance the qualified project.

(b) An area designated as a region by the local government:

(1) May include the entire local government; and

(2) Shall be located completely within the local government's jurisdiction.

(c) A local government may designate more than one (1) area as a region. If multiple regions are designated, the regions may be separate, overlapping, or coterminous.

68-204-106.

(a) To establish a PACE program under this chapter, the local government shall take action in the following order:

(1) Adopt a resolution of intent that includes:

(A) A finding that, if appropriate, the financing of qualified projects through contractual assessments is a valid public purpose;

(B) A statement that the local government intends to make contractual assessments to repay financing for qualified projects available to property owners;

(C) A description of the types of qualified projects that may be subject to contractual assessments;

(D) A description of the boundaries of the region;

(E) A description of any proposed arrangements for third-party administration or financing to be available or any local government financing to be provided for qualified projects;

(F) A description of local government debt-servicing procedures if third-party financing is provided and assessments are collected to service a third-party debt;

(G) A reference to the report on the proposed program prepared pursuant to § 68-204-107, and a statement identifying the location where the report is available for public inspection;

(H) A statement of the time and place for a public hearing on the proposed program as required in subdivision (a)(2); and

(I) A statement identifying the appropriate local official and the county assessor of property for consulting about the collection of proposed contractual assessments with property taxes imposed on the assessed property;

(2) Hold a hearing for the public to comment on the proposed program, including the report created under § 68-204-107; and

(3) Adopt a resolution establishing the program and its terms, including:

(A) Each item included in the report as prescribed in § 68-204-107. The resolution may incorporate the report or the amended report by reference; and

(B) A description of each aspect of the program that may be amended, but only after a public hearing is held.

(b) Subject to the terms of the resolution establishing the program as provided in subdivision (a)(3), the local government may amend a program by resolution.

(c) A local government may:

(1) Hire and set the compensation of a program administrator and program staff; or

(2) Delegate or contract for professional or administrative services necessary to administer the program.

(d) A local government may impose fees to offset the costs of administering a program. The fees authorized by this subsection (d) may be assessed as:

(1) A program application fee paid by the property owner requesting to participate in the program;

(2) A component of the interest rate on the assessment in the written contract between the local government and the property owner; or

(3) A combination of subdivisions (d)(1) and (2).

68-204-107.

(a) The report for a proposed program for which a hearing is held pursuant to § 68-204-106(a)(2) shall include:

(1) A map showing the boundaries of the proposed region;

(2) A form contract between the local government and the property owner specifying the terms of:

(A) Assessment under the program;

(B) Financing provided by a third party or the local government, as appropriate; and

(C) Remedies for default or foreclosure;

(3) A form contract between the local government and the third party regarding the servicing of the debt through assessments, if the proposed program provides for third-party financing;

(4) A description of the types of qualified projects that may be subject to contractual assessments;

(5) A statement identifying the local government official authorized to enter into written contracts on behalf of the local government;

(6) A plan for ensuring sufficient capital for third-party financing;

(7) If bonds will be issued to provide capital to finance qualified projects as part of the program, as provided by § 68-204-113:

(A) A maximum aggregate annual dollar amount for financing through contractual assessments, to be provided by the local government under the program;

(B) A method for ranking requests from property owners for financing through contractual assessments in order of priority, if the number of requests appears likely to exceed the authorization amount; and

(C) A method for determining:

(i) The interest rate and period during which contracting owners would pay an assessment based on the qualified improvement; and

(ii) The maximum amount of an assessment;

(8) A method for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project that is the basis for the assessment;

(9) A description of the application process and eligibility requirements for financing qualified projects to be repaid through contractual assessments under the program;

(10) A method, as prescribed by subsection (b), for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations to be repaid through contractual assessments;

(11) A statement explaining the manner in which property will be assessed and how assessments will be collected;

(12) A statement explaining the verification requirement in § 68-204-108;

(13) A description of marketing and participant education services to be provided for the program;

(14) A description of quality assurance and anti-fraud measures to be instituted for the program that conform to the applicable sections of the United States department of energy Best Practices Guidelines dated November 18, 2016; and the United States department of housing and urban development July 19, 2016, Mortgagee Letter 2016-11; and

(15) The procedures for collecting the proposed contractual assessments.

(b) The method for ensuring a demonstration of financial ability under subdivision (a)(10) shall be based on appropriate underwriting factors, including:

(1) Verification that:

(A) The property owner requesting to participate in the program:

(i) Is the legal owner of the benefited property;

(ii) Is current on mortgage and property tax payments; and

- (iii) Is not insolvent or in bankruptcy proceedings; and
- (B) The title of the benefited property is not in dispute; and
- (2) Requiring an appropriate ratio of the amount of the assessment to the value of the property.
- (c) The local government shall make the report available for public inspection:
 - (1) On the local government's website; and
 - (2) At the office of the official designated to enter into written contracts on behalf of the local government under the program.

68-204-108. After a qualified project is completed, the local government shall obtain verification that the qualified project was properly completed and is operating as intended. A verification of energy efficiency by the Tennessee valley authority (TVA) or a local power company shall satisfy the requirements of this section.

68-204-109. The proposed arrangements for financing a qualified project may authorize the property owner to:

- (1) Purchase directly the related equipment and materials for the installation or modification of a qualified improvement; or
- (2) Contract directly, including through lease, power purchase agreement, or other service contract, for the related equipment and materials used in the installation or modification of a qualified improvement.

68-204-110.

(a) A local government that authorizes financing through contractual assessments under this chapter shall file written notice of each contractual assessment in the records of the office of the county register of deeds of the county in which the property is located.

(b) The notice required pursuant to subsection (a) shall contain:

- (1) The amount of the assessment;
- (2) The legal description of the property;
- (3) The name of each property owner; and
- (4) A reference to the statutory assessment lien provided under this

chapter.

68-204-111.

(a) Except as otherwise provided in subsections (f) and (g), a contractual assessment under this chapter and any interest or penalties on the assessment:

- (1) Is 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 pursuant to § 68-204-110, until the assessment, interest, or penalty is paid; and
- (2) Has the same priority status as a lien for any other ad valorem tax.

(b) The lien shall run with the land, and that portion of the assessment under the assessment contract that is not yet due shall not be accelerated or eliminated by foreclosure of a property tax lien.

(c) The assessment lien may be enforced by the local government in the same manner that a property tax lien against real property may be enforced by the local government.

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

(e) A local government may recover costs and expenses, including attorney's fees, in an action to collect a delinquent installment of an assessment in the same manner as in an action to collect a delinquent property tax.

(f) A contractual assessment that is deemed to be a lien against residential property pursuant to subsection (a) shall be subordinate to any existing lien against the property and any subsequent first deed of trust or first mortgage holder as the result of any sale, transfer, or refinancing of a mortgage.

(g) If a lien is attached to commercial property prior to the execution of a contract imposing an assessment on the property, the contractual assessment shall not be deemed to be a lien against the commercial property until the senior lienholder has received written notice of the assessment.

(h) A provision of a deed of trust, mortgage, or any other agreement between a lienholder and a property owner that provides for the acceleration of any payment under the deed of trust, mortgage, or agreement solely as the result of entering into an agreement to finance an assessment is not enforceable; provided, that a holder or loan servicer may increase the monthly amount held in escrow as may be required to annually pay the assessment.

68-204-112. The local government may contract with another local governmental entity, including a county assessor of property, to perform the duties of the local government relating to the collection of assessments imposed pursuant to this chapter.

68-204-113.

(a) A local government may issue bonds or notes to finance qualified projects through contractual assessments under this chapter.

(b) Bonds or notes issued pursuant to this section must not be general obligations of the local government, nor shall the full faith and credit of the local government or the state be pledged to secure the bonds. The bonds or notes shall be secured by payments of contractual assessments on benefited property in one (1) or more specified regions designated under this chapter.

(c) A local government pledge of assessments in connection with the issuance of bonds or notes by the local government under this chapter is a first lien on the assessments pledged in favor of the person to whom the pledge is given, without further action by the local government. The lien is valid and binding against any other person, with or without notice.

(d) Bonds or notes issued pursuant to this chapter further an essential public and governmental purpose, including:

(1) Improvement of the reliability of the TVA and local power company electrical system, grid, and services through energy conservation and distributed generation;

(2) Conservation of state water resources consistent with the department of environment and conservation drought management plan and water conservation policies and programs;

(3) Reduction of energy costs;

(4) Economic stimulation and development;

(5) Enhancement of property values; and

(6) Enhancement of employment opportunities.

(e) For the purposes of securing state or private third-party financing for qualified projects, a local government may serve as an aggregating entity, and may use the services of one (1) or more private, public, or quasi-public third-party administrators to administer, provide support, or obtain financing.

(f) For the purposes of securing state or private third-party financing for qualified projects, any participating local government may assign or sell, for consideration, any liens imposed under this chapter to another governmental entity or to the private, public, or quasi-public third-party administrator in subsection (e). The consideration received by

the local government shall be negotiated between the local government and the assignee. The assignee or assignees of the liens shall have the same powers and rights at law or in equity as the participating local government and the assessor of property would have had if the lien had not been assigned with regard to the precedence and priority of the lien, the accrual of interest, and the fees and expenses of collection. The assignee shall have the same rights to enforce the lien as any private party holding a lien on real property, including, but not limited to, foreclosure and a suit on the debt. Costs and reasonable attorneys' fees incurred by the assignee as a result of any foreclosure action or other legal proceeding brought pursuant to this section and directly related to the proceeding shall be taxed in any such proceeding against each person having title to any property subject to the proceedings. The costs and fees may be collected by the assignee at any time after demand for payment has been made by the assignee.

68-204-114.

(a) Any combination of local governments may agree to jointly implement or administer a program under this chapter.

(b) If two (2) or more local governments implement a program jointly, a single public hearing held jointly by the cooperating local governments is sufficient to satisfy the requirement of § 68-204-106(a)(2).

(c) One (1) or more local governments may contract with a third party, including another local government, to administer a program.

68-204-115.

(a) A local government, or a local government working in combination with a designee, shall establish a residential loss reserve fund, referred to in this section as the "fund."

(b) The fund shall be established for the purpose of protecting the holder of a residential mortgage or deed of trust recorded in first lien position against the property on which qualifying improvements have been installed from losses caused by the failure of a property owner to fulfill obligations under a PACE program assessment.

(c) The fund shall be funded through private capital or through an assessment at the time of contracting with a property owner. The fund shall be funded at a level sufficient to cover estimated cash losses that first mortgage or deed of trust holders actually suffer as a result of a property owner's failure to fulfill the obligations under a PACE program assessment, whether the losses result from payments or advances made either by the holder of the first mortgage or deed of trust on behalf of the property owner, or before the outstanding balance of the first mortgage or deed of trust has been paid by payment to the relevant tax collection authority. Losses may also include penalties and interest where they have accrued through no fault of the first mortgage lender.

(d) A local government, or a local government working in combination with a designee, may contract with a third party with appropriate financial experience and qualifications to administer the fund.

(e) The fund may be a statewide fund comprising the loss reserve funds of participating local governments.

(f) The local government, or a local government working in combination with a designee, or the administrator of a statewide fund, may decrease, waive, or rebate the capitalization contribution if the fund is deemed sufficiently capitalized.

68-204-116. A local government that establishes a region shall not:

(1) Make the issuance of a permit, license, or other authorization from the local government to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of a qualified project through contractual assessments under this chapter; or

(2) Otherwise compel a person who owns property in the region to enter into a written contract to repay the financing of a qualified project through contractual assessments.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act shall be severable.

SECTION 3. This act shall take effect January 1, 2018, the public welfare requiring it.