

ACT 45, AS PASSED BY HOUSE AND SENATE  
VERMONT ENERGY ACT OF 2009

**\*\*\* Clean Energy Assessment Districts<sup>1</sup> \*\*\***

**Sec. 15e. FINDINGS**

The general assembly finds that it is in the public interest for municipalities to finance renewable energy projects and energy efficiency projects in light of the goals set forth in section 578 of Title 10 (greenhouse gas reduction goals), section 580 of Title 10 (25 by 25 state goal), and section 581 of Title 10 (building efficiency goals).

**Sec. 15f. 24 V.S.A. §1751(3) is amended to read:**

(3) “Improvement,” shall include, apart from its ordinary signification,:

(A) The acquiring of land for municipal purposes, the construction of, extension of, additions to, or remodeling of buildings or other improvements thereto, also furnishings, equipment or apparatus to be used for or in connection with any existing or new improvement, work, department or other corporate purpose, and also shall include the purchase or acquisition of other capital assets, including licenses and permits, in connection with any existing or new improvement benefiting the municipal corporation, and all costs incurred by the municipality in connection with the construction or acquisition of the improvement and the financing thereof, including without limitation capitalized interest, underwriters discount, the funding of reserves and the payment of contributions to establish eligibility and participation with respect to loans made from any state revolving fund, to the extent such payment is consistent with federal law;

(B) Pursuant to subchapter 2 of chapter 87 of this title, projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

**Sec. 15g. 24 V.S.A. §2291 is amended to read:**

**§2291. ENUMERATION OF POWERS**

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

\* \* \*

(23) Acting individually or in concert with other towns, cities, or incorporated villages and pursuant to subchapter 2 of chapter 87 of this title, to incur indebtedness for or otherwise finance by any means permitted under chapter 53 of this title projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible energy

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<sup>1</sup> In the Vermont legislation, this provision is described as the Clean Energy Assessment District program, or CEAD. However, as this concept has gained popularity nationally, it has come to be generally referred to as PACE.

ACT 45, AS PASSED BY HOUSE AND SENATE  
VERMONT ENERGY ACT OF 2009

efficiency projects undertaken by owners of real property within the boundaries of the town, city, or incorporated village. Energy efficiency projects shall be those that are eligible under section 3267 of this title.

**Sec. 15h. SUBCHAPTER DESIGNATION**

**24 V.S.A. chapter 87§3251–3256 shall be designated as:**

**Subchapter 1. General Provisions**

**Sec. 15i. 24 V.S.A. §3252 is amended to read:**

**§3252. PURPOSE OF ASSESSMENTS**

Special assessments may be made for the purchase, construction, repair, reconstruction, or extension of a water system or sewage system, or any other public improvement which is of benefit to a limited area of a municipality to be served by the improvement, including those projects authorized under subchapter 2 of this chapter.

**Sec. 15j. 24 V.S.A. chapter 87, subchapter 2 is added to read:**

**Subchapter 2. Clean Energy Assessments**

**§3261. CLEAN ENERGY ASSESSMENT DISTRICTS; APPROVAL OF VOTERS**

(a) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a clean energy assessment district. In a clean energy assessment district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.

(b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of real property within the boundaries of the town, city, or incorporated village.

**§3262. WRITTEN AGREEMENTS; CONSENT OF PROPERTY OWNERS; ENERGY SAVINGS ANALYSIS**

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of real property within the boundaries of a clean energy assessment district may

ACT 45, AS PASSED BY HOUSE AND SENATE  
VERMONT ENERGY ACT OF 2009

enter into a written agreement with the municipality that shall constitute the owner's consent to be subject to a special assessment, as set forth in section 3255 of this title. A participating municipality shall follow underwriting criteria, consistent with responsible underwriting and credit standards as established by the department of banking, insurance, securities, and health care administration, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30, or conducted by another entity deemed qualified by the participating municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) the length of time allowed for the property owner to repay the assessment shall not exceed the life expectancy of the project. In instances where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted by cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under subdivision 209(d)(2) of Title 30 or another qualified technical entity designated by a participating municipality;

(2) At the time of a transfer of property ownership excepting foreclosure, the past due balances of any special assessment under this subchapter shall be due for payment, but future payments shall continue as a lien on the property.

(3) A participating municipality shall disclose to participating property owners the risks associated with participating in the program, including risks related to the failure of participating property owners to make payments and the risk of foreclosure.

(d) A written agreement and the analysis performed pursuant to subsection (b) of this section shall be filed with the clerk of the municipality for recording in the land records of the municipality and shall be disclosed to potential buyers prior to transfer of property of ownership. Personal financial information provided to a municipality by a participating property owner or potential participating property owner shall not be subject to disclosure as set forth in subdivision 317(c)(7) of Title 1.

(e) At least 30 days prior to entering into a written agreement, the property owner shall provide to the holders of any existing mortgages on the property notice of his or her intent to enter into the written agreement.

ACT 45, AS PASSED BY HOUSE AND SENATE  
VERMONT ENERGY ACT OF 2009

(f) The total amount of assessments under this subchapter shall not exceed more than 15 percent of the assessed value of the property. The combined amount of the assessment plus any outstanding mortgage obligations for the property shall not exceed 90 percent of the assessed value of that property.

(g) In the case of an agreement with the resident owner of a dwelling, as defined in section 103(v) of the federal Truth in Lending Act:

- (1) the assessments to be repaid under the agreement, when calculated as the repayment of a loan, shall not violate chapter 4 of Title 9;
- (2) the maximum length of time for the owner to repay the loan shall not exceed 20 years; and
- (3) the maximum amount to be repaid for the project shall not exceed \$30,000.00 or 15 percent of the assessed value of the property, whichever is less.

**§3263. COSTS OF OPERATION OF DISTRICT**

The owners of real property who have entered into written agreements with the municipality under section 3262 of this title shall be obligated to cover the costs of operating the district. A municipality may use other available funds to operate the district.

**§3264. RIGHTS OF PROPERTY OWNERS**

A property owner who has entered into a written agreement with the municipality under section 3262 of this title may enter into a private agreement for the installation or construction of a project relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or relating to energy efficiency as defined by section 3267 of this title.

**§3265. LIABILITY OF MUNICIPALITY**

(a) A municipality that incurs indebtedness for or otherwise finances projects under this subchapter shall not be liable for the failure of performance of a project.

(b) A municipality that incurs indebtedness for bonding under this subchapter shall pledge the full faith and credit of the municipality.

**§3266. INTERMUNICIPAL AGREEMENTS**

Two or more municipalities, by resolution of their respective legislative bodies or boards, may establish and enter into agreements for incurring indebtedness or otherwise financing projects under this subchapter.

**§3267. ELIGIBLE ENERGY EFFICIENCY PROJECTS**

Those entities appointed as energy efficiency utilities under subsection 209(d) of Title 30 shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year.

ACT 45, AS PASSED BY HOUSE AND SENATE  
VERMONT ENERGY ACT OF 2009

**§3268. RELEASE OF LIEN**

(a) A municipality shall release a participating property owner of the lien on the property against which the assessment under this subchapter is made upon:

- (1) Full payment of the value of the assessment; or
- (2) Demand from a party who has filed an action for foreclosure on a participating property.

(b) If a municipality releases a participating property owner of a lien upon demand from a party who has filed an action for foreclosure and the participating property owner redeems the property, the municipality shall reinstate the lien on the property against which the assessment under this subchapter is made.

(c) Notice of the release or reinstatement of the lien shall be filed with the clerk of the municipality for recording in the land records of the municipality.

**§3269. RESERVE FUND**

(a) A participating municipality may create a reserve fund for use in the event of a foreclosure upon an assessed property. The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of any past due balances on assessments under this subchapter and any remaining principal balances on those assessments in the event of a foreclosure upon a participating property.

(b) The reserve fund shall be capitalized in accordance with standards and procedures approved by the commissioner of banking, insurance, securities, and health care administration to cover expected foreclosures based on good lending practice experience.

(c) The municipality shall disclose in advance to each interested property owner the amount of that property owner's required payment into the reserve fund. Once disclosed, the amount of the reserve fund payment shall not change over the life of the assessment.

**Sec. 15k. 24 V.S.A. §4592 is amended to read:**

**§4592. SUPPLEMENTARY POWERS**

The bank, in addition to any other powers granted in this chapter, has the following powers:

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(8) To the extent permitted under its contracts with the holders of bonds or notes of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other term of bond or note, contract or agreement of any kind to which the bank is a party; and

ACT 45, AS PASSED BY HOUSE AND SENATE  
VERMONT ENERGY ACT OF 2009

(9) To issue its bonds or notes which are secured by neither the reserve fund nor the revenue bond reserve fund, but which may be secured by such other funds and accounts as may be authorized by the bank from time to time;

(10) To issue bonds, other forms of indebtedness, or other financing obligations for projects relating to renewable energy, as defined in subdivision 8002(2) of Title 30, or to energy efficiency projects under subchapter 2 of chapter 87 of this title. Bonds shall be supported by both the general obligation and the assessment payment revenues of the participating municipality.

**Sec. 16. EFFECTIVE DATE**

This act shall take effect upon passage with the following exceptions:

(1) Secs. 9 and 9a (relating to business solar energy tax credits) shall apply to credits related to investments made on or after January 1, 2009; and

(2) Sec. 9b (relating to the repeal of the 76-percent portion of the business solar energy tax credit) shall apply to credits related to investments made on or after January 1, 2011.