

## CHAPTER 54

( HB 100 )

AN ACT relating to energy project assessment districts or EPAD.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*As used in Sections 1 to 5 of this Act:*

- (1) *"Energy improvement" means any permanent improvement fixed to real property and intended to increase the efficiency of energy use or decrease water or energy consumption or demand, generate electricity, provide thermal energy, or regulate temperature, including but not limited to a product, device, technology, or interacting group of products, devices, or technologies on the customer's side of an electric, gas, water, or other energy meter;*
- (2) *"Energy project" means the installation or modification of an energy improvement, including any associated project or financing costs;*
- (3) *"Energy project assessment district" or "EPAD" means a geographic area designated by a local government pursuant to Section 2 of this Act, within which energy projects may be undertaken and financed through the imposition of an assessment pursuant to Sections 1 to 5 of this Act;*
- (4) *"Local government" means any city, county, consolidated local government, urban-county government, charter county government, or unified local government of the Commonwealth;*
- (5) *"Program" means an EPAD program established by a local government pursuant to Section 2 of this Act; and*
- (6) *"Real property" excludes residential property consisting of fewer than five (5) units.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *Pursuant to Sections 1 to 5 of this Act, the governing body of a local government may establish a program to advance the conservation and efficient use of energy and water resources within its jurisdiction, which program is hereby declared to be a valid exercise of the powers of local government and is in the best interest of the people of the Commonwealth, by allowing for energy projects to be financed by assessments imposed upon the real property being improved through the energy project. Nothing in Sections 1 to 5 of this Act shall be interpreted to:*
  - (a) *Expand the powers of eminent domain for a local government, state agency, or private entity or to allow a local government, state agency, or private entity to use the powers of eminent domain under this program; or*
  - (b) *Disregard or allow contravention of any net metering ordinance or policy, any generator interconnection ordinance or policy, or any rate ordinance duly adopted by the governing body.*
- (2) (a) *To establish a program, the governing body of a local government shall adopt a resolution or ordinance providing the terms and conditions of the program, including but not limited to:*
  1. *A statement that the local government intends to utilize assessments on relevant real property to support private sector energy projects;*
  2. *The designation of an EPAD, and a description of the boundaries thereof; and*
  3. *A procedure for the owners of record of real property located within an EPAD to petition the local government for participation in the program.*
- (b) *Once a program is established, the governing body of a local government may amend the terms and conditions of the program by resolution or ordinance; except that no amendment shall be adopted to retroactively change the conditions under which an existing assessment was imposed, unless the owner of record of the affected real property consents to the amendment in writing.*
- (c) *A local government may:*
  1. *Hire program staff, or contract with a third-party entity to administer a program;*

2. *Impose fees on participating property owners to offset the costs of administering the program, including assessment and collection functions of various county offices; except that these fees shall not exceed the cost of services performed; and*
  3. *Engage financing for the purpose of administering the program from financial institutions with a physical presence in Kentucky whose deposits are insured by the Federal Deposit Insurance Corporation.*
- (d) *Any combination of local governments may agree to jointly implement or administer a program.*
- (3) (a) *The geographic area designated by the governing body of a local government as the EPAD:*
1. *May include the entire local government or any portion thereof; and*
  2. *Shall be wholly within the boundaries of the local government.*
- (b) *A local government may designate more than one (1) separate EPAD within its boundaries.*
- (4) *An authorized official of a local government that has established a program may approve a request from the owner of record of real property located within an EPAD to impose an assessment upon the property, which shall be used to repay the owner's financing of an energy project on that property and the costs of any upgrades to the electrical or gas distribution system connected to that property necessary to accommodate the energy improvement. The upgrade costs shall be paid to the owner of the electrical distribution system. The financing may be provided by a third party or, if authorized by the local government, by any local government.*
- (5) *Each energy project approved for participation in the program shall include a review of the property's baseline energy or water usage conditions and the energy or water savings projected to be achieved as a result of the energy project.*
- (6) *A program may authorize a participating property owner to:*
- (a) *Directly purchase; or*
  - (b) *Acquire by contract, through a lease, power purchase agreement, or other service contract; the equipment and materials necessary for the installation or modification of an energy improvement.*
- (7) *In addition to the authority provided in the Kentucky Revised Statutes for local governments to levy special assessments with the same lien status as a property tax, the governing body of a local government that establishes a program pursuant to this section may exercise powers granted under Sections 1 to 5 of this Act.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *An assessment may be imposed by a local government upon real property located in an EPAD and undergoing an approved energy project, pursuant to Sections 1 to 5 of this Act, to repay the financing and associated costs of the energy project.*
- (2) (a) *A local government may impose an assessment only after:*
1. *A petition to participate in the program and to be assessed is filed by the owner of record of the real property to be assessed; and*
  2. *A written contract is signed between the local government and the owner of record of the real property to be assessed accepting the energy project into the program and establishing the terms and conditions of the energy project and the assessment to be imposed.*
- (b) *The petition filed by the owner of record shall include the written consent of the holder of each existing mortgage lien on the relevant property stating that the lien holder does not object to the imposition of the assessment.*
- (3) *A local government that authorizes financing through assessments as part of a program established pursuant to Sections 1 to 5 of this Act shall file written notice of each assessment in the real property records of the county in which the property is located. This notice shall include:*
- (a) *The amount of the assessment;*
  - (b) *The legal description of the real property;*

- (c) *The name of each owner of record of the real property; and*
  - (d) *A reference to the statutory assessment lien provided under this section.*
- (4) *Upon the imposition of an assessment, the assessment:*
- (a) *Shall be added to the property tax bill for the relevant property;*
  - (b) *Shall be collected and distributed by the sheriff, or other designated local official or department, to the imposing local government in the same manner as the other taxes on the bill, and unpaid assessments shall bear the same penalty as general state and local ad valorem taxes; and*
  - (c) *Shall, together with any interest and penalties, constitute a first and prior lien against the real property on which the assessment is imposed from the date on which the notice of assessment is recorded pursuant to this section until paid. This lien shall have the same priority status as a lien for any other state or local ad valorem tax upon the property.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

- (1) *A local government may issue bonds or notes to finance energy projects through assessments imposed pursuant to Sections 1 to 5 of this Act.*
- (2) *Bonds or notes issued under this section shall not be general obligations of the local government. The bonds or notes shall be secured solely by one (1) or more of the following, as provided by the governing body of the local government in the resolution or ordinance approving the issuance of the bonds or notes:*
  - (a) *Payments of assessments on relevant real properties in one (1) or more specified energy project assessment districts;*
  - (b) *Reserves established by the local government from grants, bonds, or other available funds;*
  - (c) *Municipal bond insurance, lines of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, or other available means of providing credit support or liquidity; and*
  - (d) *Any other funds available for the purposes of Sections 1 to 5 of this Act.*
- (3) *A local government pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the local government under this section constitutes a first lien on the assessments, funds, or contractual rights 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.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

*The imposition of an assessment pursuant to Sections 1 to 5 of this Act is to be made solely at the request of the owner of record of real property within an EPAD. A local government shall not compel a person who owns real property in an EPAD to enter into a contract to repay the financing of an energy project through assessments under Sections 1 to 5 of this Act.*

➔Section 6. This Act may be cited as the EPAD Act of 2015.

**Signed by Governor March 23, 2015.**