COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1038S.04C
Bill No.: SCS for SB 105
Subject: Boards, Commissions, Committees, Councils; Contracts and Contractors; Energy; Property, Real and Personal; Taxation and Revenue - Property; Utilities
Type: Original
Date: March 29, 2021

Bill Summary: This proposal modifies provisions relating to property assessment contracts for energy efficiency.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on General Revenue	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on Other State Funds	**$0**	**$0**	**$0**

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on <u>All</u> Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	**0**	**0**	**0**

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed $250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed $250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	**(Greater than $100,000)**	**(Greater than $100,000)**	**(Greater than $100,000)**

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Commerce and Insurance (DCI)** assume this proposal would require the Division of Finance (DOF) to examine residential PACE boards and their program administrators in Missouri.

DOF assumes that any costs associated with this proposal would be offset by the examination fees paid by the PACE districts and program administrators. DOF anticipates current staffing levels can absorb the additional workload; and therefore, there will be no need for additional FTE or appropriation authority. If the bill changes significantly, or unanticipated factors increase the expected workload such that additional resources will be necessary to implement this legislation, DOF would pursue those resources through the appropriations process.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for DCI.

Officials from the **Department of Natural Resources**, **Attorney General's Office**, **Office of the State Auditor** and **Office of the State Treasurer** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

In response to a previous version, officials from the **City of Kansas City** assumed this legislation provides that the City Collector may be responsible for collection (should the City desire to take part) and the City may still cover costs of the examination (as the program administrator), the legislation could therefore result in an unknown, negative fiscal impact on Kansas City.

Oversight does not have any information to the contrary in regards to the City of Kansas City's assumptions; therefore, Oversight will reflect an unknown cost to local political subdivisions on the fiscal note.

Officials from the **Lincoln County Assessor**, **City of Corder**, **City of Claycomo**, **City of Hughesville**, **City of O'Fallon** and **City of Springfield** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this agency.

In response to a previous version, officials from the **City of Ballwin** assumed the proposal would have no fiscal impact on their organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this agencies.

In response to a previous version, officials from the **Clean Energy Development Board of the City of St. Louis** assumed the exact costs to implement this proposal are unknown, although there are certain reasonable assumptions that can be made to provide an estimate. The following costs are costs incurred by program operation through the Clean Energy Development Board (CEDB) and program administrators.

§67.2810 Paragraph 4 – removes limits on lawsuits to set aside CEDB formation or official proceedings

The current Property Assessed Clean Energy statute in Missouri states: "No lawsuit to set aside the formation of a clean energy development board… shall be brought after the expiration of sixty days from the effective date of the ordinance or order creating the clean energy development board. No lawsuit to set aside the approval of a project, an assessment contract, or a special assessment… shall be brought after the expiration of sixty days from the date that the assessment contract is executed."

Removing this limitation on lawsuits would lead to increased legal exposure for the program and its proceedings. The impacts of this added risk and exposure would require legal research resulting in estimated costs of **$75,000.** Further, the added risk and exposure of CEDBs will increase the cost of capital to Missouri home and building owners and potentially negatively impact the salability of PACE assets resulting in significant program attenuation or stoppage and a loss of some or all residential project revenue.

§67.2815 Paragraph 8 – PACE assessments are contingent on written consent from all lienholders instead of notification

Clean Energy Development Boards in Missouri currently notify all mortgage lienholders about assessment contracts. This new provision of SB 105 would allow mortgage banks to prevent homeowners from participating in the PACE program. In practice, this would enable one private entity in a marketplace to control which vendors a homeowner can choose for financing improvements. Banks and lenders, who compete with PACE financing, would have an unfair advantage. In addition, finding lienholders for consent is sometimes impossible due to lenders selling off loans to secondary markets. Not only would this provision remove consumer choice, but it may be impossible to achieve, resulting in hundreds of, if not all assessments not being completed. This provision would result in complete program stoppage, costing an estimated **$1,650,000 in annual project revenue.**

§67.2816 Paragraph 3 – Director of the Division of Finance is granted rule promulgation authority

Rulemaking authority under Missouri law for the PACE program is already exercised by the Environmental Improvement and Energy Resources Authority (EIERA) in regard to determining acceptable eligibility improvements.

Granting such wide authority over local Clean Energy Development Boards to a state agency Director of the Division of Finance is administratively duplicative. Any rule-making process would require significant legal engagement and resources and place uncertainty on the program, costing a projection of **$250,000** annually.

§67.2816 Par 5 - 6 – State ability to cancel and void PACE contracts and liens

Clean Energy Development Boards (CEDBs) are separate political subdivisions of the state and have the ability to issue special assessments on properties within their jurisdiction(s). PACE assessments secure financing for eligible property improvements after property owners execute assessment contracts and then sign a completion certificate indicating the contractor's work and the project has been completed to their satisfaction. SB 105 includes a provision for a state agency, the Division of Finance, to examine CEDBs and issue a notice of charges, fixing a time and place for a hearing to determine if a "cease and desist" order shall be filed to release the assessment or stop the "course of business," or if a curative order shall be issued, or if a civil penalty of up to $500 per violation shall be issued. The CEDBs then have no recourse after the hearing to appeal.

Significant legal and other third-party costs will be incurred by the CEDB to assess, analyze, and review what impacts this would have on the financial structure of the program (including potentially preventing salability of PACE assets to secondary markets). This provision will impact the potential cost of capital to the program and calls into question the ability of the capital markets to participate in the program due to the uncertainties created by this section. While the exact cost of this is unknown due to the uncertainties that this provision creates, they estimate this to be a minimum cost of **$150,000.**

Potential legal costs during a hearing are unknown but could exceed **$100,000.** It is also unclear who or what entities are liable for the legal costs for both sides of any hearing as that is not stipulated. Further, PACE contracts being vulnerable to annulment and cancellation by a state agency at any time in the life of the asset may lead to difficulty in selling PACE assets and a significant loss of revenue and/or the program being inoperable (see Losses below).

§67.2816 Paragraph 7 – Added cost to PACE Boards and Program Administrators for Division of Finance Oversight Examinations for §§67.2817 and 67.2818

SB 105 states that the "clean energy development board and its program administrator or other agents shall be jointly and severally responsible for paying the actual costs of [the Division of

Finance] examinations" which the director [of the Division of Finance] "shall assess upon the completion of an examination […]" How much of these costs would be borne by PACE boards and program administrators is unknown; however, such costs are estimated at **$50,000 annually.**

§67.2816 Paragraph 7 – Added cost to Clean Energy Development and Program Administrators for Division of Finance Oversight Examinations for §67.2819

PACE programs have been expressly designed to be cost-free to the governing boards. The programs finance themselves though operations and provide public benefits such as job creation, utility bill savings, and other benefits without increases in public spending. SB 105 adds an additional section, Sec. 67.2819 Contractor Oversight and Training, to the Division of Finance examination process.

This concerns the hundreds of independent energy and home performance contracting companies that participate in Missouri PACE programs. The Division of Finance does not currently regulate or conduct examinations of energy and home performance or similar contractors participating in special assessment district financing programs such as PACE programs in Missouri. The cost of this expanded examination role in SB 105, which would be borne by the program operation through its PACE board, is unknown. However, they estimate such cost to be a minimum of **$45,000 annually** and this cost is scalable based on the number of home performance contracting companies that participate in the program.

SB 105 rejects this revenue neutral characteristic by placing liability for Division of Finance examinations onto the PACE Boards: "…clean energy development board and its program administrator or other agents shall be jointly and severally responsible for paying the actual costs of [the Division of Finance] examinations" which the director [of the Division of Finance] "shall assess upon the completion of an examination […]" Expanded liability and increased regulations may be in conflict with enabling ordinances creating PACE programs, and/or may violate contractual points or program-design attributes. Significant legal and other third-party costs will be incurred by the CEDBs, program administrators, including review by their respective external and internal counsel with regard to the impacts of the foregoing matter. They estimate these costs to be a minimum of **$75,000.**

SB 105 proposes to restructure oversight of Missouri Clean Energy Development Boards residential PACE programs and place them under additional state agency regulation and examination program with the Division of Finance. Residential PACE originations during 2019 for the Clean Energy Development Board of the City of St. Louis was approximately **$1,650,000**. A conservative estimate of the impact of increased regulation under a state agency as proposed in SB 105 would be at least a 40% reduction in project originations—**$660,000** in revenue losses.

Further, as noted above concerning the lien holder consent requirement (#2 above), **$1,650,000** in revenue losses would occur due to residential PACE program stoppage.

SB 105 includes provisions that:

1. Require mortgage banks (lienholder) to consent before a PACE assessment can be approved, giving banks a veto power over the PACE program. This would result in program stoppage.

2. Empower the Division of Finance to issue a cease-and-desist order to cancel PACE assessments at any time in the life of the asset; and

3. Place liability for state-agency examination costs on PACE boards.

Any of these provisions, together or independently, may result in program stoppage/elimination. Program stoppage/elimination would lead to a loss in residential PACE origination revenue at a rate of at least $1,650,000 annually.

In response to a previous version, officials from the **Clean Energy Development Board of St. Louis County** assumed the same impact as the Clean Energy Development Board of the City of St. Louis except for program losses of $2,320,000 and $928,000 in revenue losses.

In response to a previous version, officials from the **Show Me Pace Clean Energy Development Board** assumed the same impact as the Clean Energy Development Board of the City of St. Louis except for program losses of $276,000 and $80,000 in revenue losses.

Oversight is unable to verify the assumptions provided by these Clean Energy/PACE boards. However, Oversight assumes these boards will incur increased costs to comply with this proposal. Therefore, Oversight will reflect a cost to local political subdivisions of "Greater than $100,000" for each fiscal year. Oversight will not reflect the loss of revenue estimated by these boards as this would be an indirect fiscal impact.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, PACE boards, counties, county collectors, county assessors and county recorders were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

FISCAL IMPACT – State Government	FY 2022 (10 Mo.)	FY 2023	FY 2024
	$0	**$0**	**$0**

FISCAL IMPACT – Local Government	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
Cost - Cities/Counties - to comply with requirements of this proposal	(Unknown)	(Unknown)	(Unknown)
Cost - PACE/Clean Energy Boards - to comply with requirements of this proposal	(Greater than $100,000)	(Greater than $100,000)	(Greater than $100,000)
ESTIMATED NET EFFECT ON LOCAL POLITICAL SUBDIVISIONS	**(Greater than $100,000)**	**(Greater than $100,000)**	**(Greater than $100,000)**

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

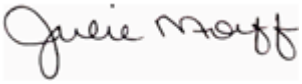
FISCAL DESCRIPTION

The proposed legislation modifies provisions relating to property assessment contracts for energy efficiency.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Commerce and Insurance
Attorney General's Office
Department of Natural Resources
Office of the State Auditor
Office of the State Treasurer
City of Ballwin
City of Corder
City of O'Fallon
City of Kansas City
City of Springfield
Clean Energy Development Board of the City of St. Louis
Clean Energy Development Board of St. Louis County
Show Me Pace Clean Energy Development Board
City of Claycomo
City of Hughesville



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KB:LR:OD