

HCS HB 814 -- Financial Institutions (O'Donnell)

COMMITTEE OF ORIGIN: Standing Committee on Financial Institutions

GOVERNMENT ACCOUNTABILITY PORTAL

This bill requires all public employee retirement systems and quasi-governmental entities to report such system's or entity's employees' salaries and any incentive pay to the Missouri government accountability portal in the same manner as all state departments and agencies report.

This bill creates the "Government Lending Transparency Act" which requires each administering agency to report annually to the state auditor the name and statutory authority for each lending program and credit support program, the total dollar amount of all lending for each for each program, and the reasonable estimates of the costs of likely defaults for each program administered by the agency.

PROPERTY ASSESSMENT CLEAN ENERGY ACT

This bill modifies the term "assessment contract" to state that property owners may enter into assessment contracts to finance energy efficiency improvements with a Clean Energy Development Board for a period of up to 20 years not to exceed the weighted average useful life of the qualified improvements. This bill adds the terms "director", "division", and "program administrator".

A Clean Energy Development Board must provide a copy of each signed assessment contract to the city or county collector and assessor.

Additionally, the special assessments must be collected by the city or county collector. After January 1, 2022, a residential assessment contract may not be approved by the Clean Energy Development Board, or otherwise presented for recordation unless written consent from each existing lien holder is obtained.

Portions of the PACE Act, as described in this bill, only apply to PACE programs for projects to improve residential properties of four or fewer units. Any Clean Energy Development Board formed to improve commercial properties, properties owned by non-profit or not-for-profit entities, governmental properties, or nonresidential properties in excess of four residential units will be exempt from portions of the PACE Act, as described in this bill, and portions of the program will not apply to the commercial PACE programs and commercial PACE assessment contracts of any Clean Energy Development Board Engaged in both commercial and residential property programs. Any Clean Energy Development Board that ceases

to finance new projects to improve residential properties of four or fewer units before January 1, 2022, will be exempt from the portions of the PACE Act, as described in this bill.

Municipalities that have created, joined, or withdrawn from a residential PACE program or district must inform the Director of the Division of Finance by submitting a copy of the enabling ordinance or withdrawal ordinance to the Division.

Clean Energy Development Boards offering residential property programs and the program administrators are subject to examination by the Division of Finance. The division must conduct an examination of each Clean Energy Development Board at least once every 24 months and such other times as the Director may determine. The Clean Energy Development Board will have the opportunity to respond to any findings in the examination. A final examination report will be delivered to the Clean Energy Development Board and sponsoring municipality and will be made available to the public with certain information redacted.

If the Director finds that a Clean Energy Development Board or its administrator has failed to comply with provisions of the PACE Act, he or she may issue a notice to the Board of the charges and notice of a hearing on such charges. If after a hearing, the Director finds the Board or its administrator has failed, refused, or neglected to comply, the Director may order certain relief as specified in the bill, including a civil penalty or forfeiture of up to \$500.

A Clean Energy Development Board and its program administrator or agents will be jointly and severally responsible for paying the actual costs of examinations, which the Director will assess upon the completion of an examination.

The Division may refer any matter related to the conduct of a Clean Energy Development Board to the Attorney General as deemed appropriate by the Director.

Notwithstanding any other contractual agreement to the contrary, each assessment contract will be reviewed, approved, and executed by the Clean Energy Development Board and these duties must not be delegated.

A Clean Energy Development Board will not approve, execute, submit, or otherwise present for recordation any residential assessment contract unless the Board verifies certain criteria set forth in the bill are satisfied. The property owner executing a PACE assessment contract will have a three-day right to cancel the contract. The Clean Energy Development Board must advise the

property owner in writing that any delinquent assessment will be a lien on the property subject to the assessment contract and that the obligations under the PACE assessment contract continue even if the property owner sells or refinances the property. If the residential property owner pays his or her property taxes and special assessments via a lender or loan servicer's escrow program, the Board must advise the property owner that the residential PACE assessment will cause the owner's monthly escrow requirements to increase and will increase the owner's total payment to the lender or the loan servicer. The Board will further advise the property owner that if the special assessment results in an escrow shortage the owner will be required to pay the shortage in a lump-sum payment or catch-up the shortage over 12 months.

The Board must also provide a statement providing a brief description of the residential project improvement, the cost of the improvement, and the annual assessment necessary to repay the obligation due on the assessment contract to any first lien holder within three days of the date the contract is recorded.

The Board must maintain a public website with current information about the residential PACE program.

The Clean Energy Development Board, its agents, contractor, or other third party will not make any representation as to the income tax deductibility of an assessment.

Any federal requirements and consumer protections for property assessed clean energy financing or similar programs apply to residential PACE assessment contracts and the Board must consider the financial ability of the property owner to repay the contract. A board may not enter into an assessment contract if the cash price of the project is more than 20% of the market value of the property or if the contract or special levy to collect the assessment, combined with any additional indebtedness, exceeds 80% of the current market value of the property.

The Board that offers residential PACE projects must provide a disclosure form to homeowners that will show the financing terms of the assessment contract. The disclosure form will be presented to a property owner prior to the execution of an assessment contract.

Before a property owner executes an assessment contract, the PACE board will make an oral confirmation that at least one owner of the property has a copy of the assessment contract documents, the financing estimate and disclosure form, and the right to cancel form. An oral confirmation will also be made of the key terms of the assessment contract, in plain language, and an acknowledgment must be obtained from the property owner or authorized

representative to whom the oral confirmation is given.

Contractors or other third parties cannot advertise the availability of residential assessment contracts that are administered by a board or solicit property owners on behalf of the PACE Board, unless the contractor maintains his or her permits and agrees to act in accordance with advertising laws.

The bill sets limitations on what incentives or information the Board will provide to a contractor.

A contractor must not provide a different price for a project financed as a residential PACE project than the contractor would provide if paid in cash by the property owner.

Certain provisions of the bill will be effective and apply to the residential PACE programs of Clean Energy Development Boards and participating municipalities after January 1, 2022.

Certain provisions of the bill will be effective and apply to residential PACE assessment contracts entered into after January 1, 2022.

This bill adds to the list of findings that must be made by a Clean Energy Development Board before it can enter into an assessment contract or levy or collect a special assessment for a residential property project, a finding that the sum of liens and mortgages on the property plus the proposed amount of financing from the Clean Energy Development Board do not exceed 80% of the appraised value of the property combined with any value added by the project.

The provisions of this bill shall apply only to Property Assessment Clean Energy Act (PACE) programs for projects to improve residential properties. Any Clean Energy Development Board formed to improve commercial properties, properties owned by nonprofit or not-for-profit entities, governmental properties, or nonresidential properties shall be exempt from the provisions of this bill. The provisions of this bill will not apply to the commercial PACE programs and commercial PACE assessment contracts of any Clean Energy Development Board engaged in both commercial and residential property programs. Any Clean Energy Development Board that ceases to finance new projects to improve residential properties before January 1, 2022, will be exempt from the of this bill.

WORKPLACE RETIREMENT SAVINGS PLAN

This bill establishes the "Missouri Workplace Retirement Savings Plan", which is a multiple-employer retirement saving plan treated as a single plan under Title I of The Employee Retirement Income

Security Act of 1974 (ERISA) under 401(a), 401(k), and 413(c) of the Internal Revenue Code, in which multiple employers may voluntarily choose to participate regardless of whether any relationship exists between and among the employers other than their participation in the plan.

The bill establishes the "Missouri Workplace Retirement Savings Board" in the office of the State Treasurer. The Board consists of nine members, including three members appointed by the Speaker, and three members appointed by the President Pro Tem of the Senate, with the State Treasurer serving as chair. The Board shall design, develop and implement the Plan as outlined in the bill. The Board shall establish the Plan so that individuals can begin making contributions to the Plan no later than September 1, 2023. Any employer joining the Plan shall not be liable for an employee's decision to opt in the Plan, the employee's decision on which investments to choose, or the administration, investment, investment returns, or investment performance of the Plan.

FINANCIAL INSTITUTIONS

This bill requires at least three members of the State Banking and Savings to have at least 5 years of active bank or association management experience at an institution chartered under state law.

Currently, the Director of the Division of Finance is required to keep a bulletin board in his or her office containing various statements of information concerning corporations and persons doing business in the state. This bill modifies that requirement by requiring such statements to be posted on the Division of Finance website instead, to be updated each Monday.

The bill permits electronic notification of annual or special stockholders' meetings.

This bill permits directors of a bank or trust company to attend board meetings by telephonic conference call or video conferencing, and such directors may be counted as part of the quorum, provided the bank or trust company has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System of the Federal Financial Institution Examination Counsel.

The bill permits the Director of the Division of Finance to promulgate additional regulations to provide for the integrity of the Board of Directors' operations when directors attend board meetings remotely and for the safety and soundness of the bank and trust company's operation.

This bill repeals a provision providing a remedy for when a bank,

trust company, or director fails to follow the procedures for directors who are not physically present and counted toward the board's quorum.

The bill repeals a requirement for every elected director of a bank or trust company to take an oath and be immediately transmitted to the Director of Finance.

This bill requires the inclusion of the relevant information relative to the amount or penal sum of the bonds or policies and the sureties or underwriters thereon on a form provided by the Division of Finance and retained and preserved by the bank or trust company. The Director of Finance shall publish an annual tiered schedule of minimum levels of coverages.

The bill permits a bank or trust company to merge with one or more of its nonbank subsidiaries or affiliates pursuant to an agreement of merger as specified in the bill. The Director of Finance must be presented the agreement of merger and approve or decline the agreement within 30 days. If the agreement is declined, the bank or trust company may appeal the decision to the State Banking and Savings and Loan Board.

The bill allows the holder of a retail installment contract to charge, finance, and collect a reasonable service fee not to exceed \$25 for each check, draft, order, or like instrument returned unpaid by a financial institution, plus an amount equal to the actual charge for the return of each check, draft, order, or like instrument returned unpaid.

If a retail installment contract is paid in full, the holder shall provide the buyer proof of payment in full which may be by a letter referencing the contract which shall include information identifying the contract such as the original loan date, account number or other identifying number or code, or by returning the original contract or a copy thereof that is marked as paid in full by the holder, or by returning the original contract or a copy thereof marked by the holder as paid in full.

This bill removes the requirement that every savings and loan association to include either the words "Savings Association" or "Savings and Loan Association" and instead permits it. The bill further repeals the prohibition on using the following words in an association name: "National", "Federal", "United States", "Insured", "Guaranteed", "Government", and "Official."

The bill permits a savings and loan institution or savings bank to merge with one or more of its subsidiaries or affiliates pursuant to an agreement of merger as specified in the bill. The Director

of Finance must be presented the agreement of merger and approve or decline the agreement within 30 days. If the agreement is declined, the savings and loan institution or savings bank may appeal the decision to the State Banking and Savings and Loan Board.

This bill modifies the process for how a person not in possession of an instrument can enforce an instrument under the Uniform Commercial Code. Specifically, a person can enforce such an instrument if, in addition to meeting criteria required currently, the person either was entitled to enforce the instrument when the loss of possession occurred or the person has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred.

This bill allows parties to agree in writing to extensions of credit primarily for business, commercial, or agricultural purposes.

The bill additionally repeals an exemption from a provision allowing any person, firm, or corporation to charge, contract for and receive interest on the unpaid principal balance at rates agreed to by the parties such that it applies to loans which are secured by a lien on nonprocessed farm products, livestock, farm machinery or crops or to loans to corporations.

This bill allows a lender to:

- (1) Charge reasonable and bona fide third-party fees paid out by the lender to any public officer for remote or electronic filing in any public office; and
- (2) Charge a reasonable service fee not to exceed \$25 for any check, draft, order, or like instrument returned unpaid by a financial institution, plus an amount equal to the actual charge for the return of each check, draft, order, or like instrument returned unpaid.

The bill repeals a provision allowing a lender to collect a fee in advance for allowing the debtor to defer up to three monthly loan payments.

Currently, a lender is allowed to collect a fee in advance for allowing a debtor to defer monthly loan payments on loans with an original amount of \$600 or more. This bill repeals the loan amount threshold for this provision such that a lender may collect such a fee on a loan of any amount.

The bill allows the charge of a reasonable and bona fide third-party fee incurred for the remote or electronic filing of the perfection, release, or satisfaction of a security interest related to a second mortgage loan.

This bill repeals a prohibition on the issuance of a second mortgage loan in an initial principal amount of less than \$2,500.

The bill allows reasonable and bona fide third-party fees incurred for remote or electronic filing in connection with any retail time contract.

The bill modifies the amount that a lender may collect from a borrower upon default. Specifically, a lender is entitled to recover the amount due and accrued under the agreement, including interest and penalties through the date of payment in full or to the date of final judgment. Following a judgment, the lender may additionally recover the simple interest equivalent of the rate provided in the contract as applied to the amount of the judgment until the date the judgment is paid and satisfied.

This bill repeals the requirement for a default notice issued in the case of a second default on the same loan or transaction or a third default on the same second mortgage to contain a provision notifying the borrower that in case of further default the borrower will have no right to cure.