

**HOUSE BILL No. 2649**

By Committee on Energy and Environment

2-9

1 AN ACT concerning municipalities; relating to energy efficiency  
2 development boards; concerning energy efficiency improvements,  
3 assessment contracts.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) As used in this section:

7 (1) "Assessment contract" means a contract entered into between an  
8 efficiency improvement development board and a property owner, or an  
9 entity underwriting or otherwise funding the financing of the project,  
10 under which the efficiency improvement development board agrees to  
11 provide financing for a project in exchange for a property owner's  
12 agreement to pay an annual assessment for a period not to exceed the  
13 weighted average useful life of the project.

14 (2) "Bond" means any bond, note or similar instrument issued by, or  
15 on behalf of, an efficiency improvement development board.

16 (3) "Efficiency improvement development board" means a board  
17 formed by one or more municipalities pursuant to this section.

18 (4) "Efficiency improvement" means any acquisition, installation or  
19 modification benefiting publicly or privately owned property, except  
20 residential properties of four or fewer residential units, that is designed to  
21 reduce the electric, gas, water or other utility consumption of the existing  
22 or planned buildings on such property, or promote the efficient and  
23 effective management of natural resources or storm water. An "efficiency  
24 improvement" includes, but is not limited to: (A) Insulation in walls, roofs,  
25 attics, floors, foundations, and heating and cooling distribution systems;

26 (B) storm windows and doors, multiglazed windows and doors, heat-  
27 absorbing or heat-reflective windows and doors and other window and  
28 door improvements designed to reduce energy consumption;

29 (C) roofs designed to reduce energy consumption or support  
30 additional loads necessitated by other efficiency improvements;

31 (D) energy control systems;

32 (E) heating, ventilating or air conditioning distribution system  
33 modifications and replacements;

34 (F) caulking and weatherstripping;

35 (G) installation of lighting fixtures to increase energy efficiency of  
36 the lighting system;

- 1 (H) installation of energy-efficient fixtures, including, but not limited  
2 to water-heating systems and elevators;
- 3 (I) energy recovery systems;
- 4 (J) daylighting systems;
- 5 (K) photovoltaic systems;
- 6 (L) solar thermal systems;
- 7 (M) wind systems;
- 8 (N) biomass systems;
- 9 (O) geothermal systems;
- 10 (P) cogeneration and trigeneration systems;
- 11 (Q) facilities providing for water conservation or pollutant control;
- 12 (R) facilities providing for the distribution of compressed natural gas  
13 as a vehicle; and
- 14 (S) other efficiency-related items so long as the cost of such  
15 efficiency-related items that are financed by the efficiency improvement  
16 development board do not exceed 25% of the total cost of the project  
17 financed by the efficiency improvement development board.
- 18 (5) "Efficiency-related items" means any repair, replacement,  
19 improvement or modification to real property that is necessary or desirable  
20 in conjunction with an efficiency improvement, including, but not limited to,  
21 structural support improvements and the repair or replacement of any  
22 building components, paved surfaces or fixtures disrupted or altered by the  
23 installation of an efficiency improvement.
- 24 (6) "Municipality" means any city or county of this state.
- 25 (7) "Project" means one or more efficiency improvements to be  
26 installed on a property.
- 27 (b) All projects undertaken pursuant to this section are subject to the  
28 applicable municipality's orders, ordinances, resolutions and regulations,  
29 including, but not limited to, those concerning zoning, subdivision,  
30 building, fire safety and historic or architectural review.
- 31 (c) One or more municipalities may form or join an existing  
32 efficiency improvement development board by ordinance, order or  
33 resolution establishing the board for the purpose of exercising the powers  
34 described in this section. Each efficiency improvement development board  
35 shall consist of not fewer than three members, as set forth in the ordinance,  
36 order or resolution establishing the efficiency improvement development  
37 board. Members shall serve terms as set forth in the ordinance, order or  
38 resolution establishing the efficiency improvement development board and  
39 shall be appointed as follows: (1) If only one municipality is participating  
40 in the efficiency improvement development board, by the chief elected  
41 officer of the municipality with the consent of the governing body of the  
42 municipality; or
- 43 (2) if more than one municipality is participating, in a manner agreed

1 by all participating municipalities.

2 (d) An efficiency improvement development board shall have all  
3 powers necessary and convenient to carry out and effectuate the provisions  
4 of this section, including, but not limited to, the following: (1) To adopt,  
5 amend and repeal bylaws which are not inconsistent with this section;

6 (2) to adopt an official seal;

7 (3) to sue and be sued;

8 (4) to make and enter into contracts and other instruments with public  
9 and private entities;

10 (5) to accept grants, guarantees and donations of property, labor,  
11 services and other things of value from any public or private source;

12 (6) to employ or contract for such managerial, legal, technical,  
13 clerical, accounting or other assistance the board deems advisable.  
14 However, the efficiency improvement development board may only  
15 employ or contract with non-profit entities for the administration of the  
16 efficiency improvement development board and may not enter into any  
17 arrangement that results in an exclusive lender, underwriter or other  
18 financing partner for all projects financed by the efficiency improvement  
19 development board;

20 (7) to levy and collect special assessments under an assessment  
21 contract with a property owner and to record such special assessments as a  
22 lien on the property, if such assessments become delinquent under an  
23 assessment contract;

24 (8) to borrow money from any public or private source, issue bonds  
25 and provide security for the repayment of the same;

26 (9) to finance a project under an assessment contract;

27 (10) to collect reasonable fees and charges in connection with making  
28 and servicing assessment contracts, and in connection with any technical,  
29 consultative or project assistance services offered;

30 (11) to invest any funds not required for immediate disbursement in  
31 obligations of the state of Kansas or of the United States, or any agency or  
32 instrumentality thereof, or in bank certificates of deposit, but such  
33 limitations on investments shall not apply to proceeds acquired from the  
34 sale of bonds that are held by a corporate trustee; and

35 (12) to take whatever actions necessary to participate in the financing  
36 of projects, as set forth in an assessment contract.

37 (e) No later than July 1 of each year, an efficiency improvement  
38 development board shall file an annual report for the preceding calendar  
39 year with each municipality that has participated in the formation of an  
40 efficiency improvement development board and the state corporation  
41 commission that includes: (1) A brief description of each project financed  
42 by the efficiency improvement development board during the preceding  
43 calendar year, including the physical address of each property, the name or

1 names of each property owner, an itemized list of the costs of the project  
2 and the name of any contractor used to complete the project;

3 (2) the amount of assessments due and the amount collected during  
4 the preceding calendar year;

5 (3) the amount of efficiency improvement development board  
6 administrative costs incurred during the preceding calendar year; and

7 (4) a summary of the public benefits resulting from the efficiency  
8 improvements financed during the preceding calendar year, including, but  
9 not limited to, estimated cumulative utility savings resulting from the  
10 efficiency improvements.

11 (f) No lawsuit to set aside the formation of an efficiency  
12 improvement development board, or to otherwise question the proceedings  
13 related thereto, shall be brought after the expiration of 60 days from the  
14 effective date of the ordinance, order or resolution creating the efficiency  
15 improvement development board. No lawsuit to set aside the approval of a  
16 project, an assessment contract or a special assessment levied by an  
17 efficiency improvement development board, or to otherwise question the  
18 proceedings related thereto, shall be brought after the expiration of 60 days  
19 from the date that the assessment contract is executed.

20 (g) An efficiency improvement development board shall not enter  
21 into an assessment contract or levy or collect a special assessment for a  
22 project without making a finding that there are sufficient resources to  
23 complete the project, and that the estimated economic benefit, including,  
24 but not limited to, energy cost savings, maintenance and other property  
25 operating savings expected from the project during the financing period is  
26 equal to or greater than the principal cost of the project.

27 (h) An assessment contract shall be executed by the efficiency  
28 improvement development board and the benefited property owner or  
29 property owners and shall provide: (1) A description of the project,  
30 including the estimated cost of the project and a description of the  
31 estimated savings prepared in accordance with standards acceptable to the  
32 efficiency improvement development board;

33 (2) a mechanism for verifying the final costs of the project upon its  
34 completion and ensuring that any amounts advanced, financed or  
35 otherwise paid by the efficiency improvement development board toward  
36 costs of the project will not exceed the final cost of the project;

37 (3) an agreement by the property owner to pay annual special  
38 assessments for a period not to exceed the weighted average useful life of  
39 the project, as specified in the assessment contract;

40 (4) a statement that the obligations set forth in the assessment  
41 contract, including the obligation to pay annual special assessments, are a  
42 covenant that shall run with the land and be obligations upon future  
43 owners of such property;

1 (5) an acknowledgment that no subdivision of property subject to the  
2 assessment contract shall be valid unless the assessment contract or an  
3 amendment thereof divides the total annual special assessment due  
4 between the newly subdivided parcels pro rata and the special benefit  
5 realized by each subdivided parcel; and

6 (6) executed acknowledgments by authorized representatives of all  
7 entities holding mortgages on the real property to be assessed that such  
8 entities have consented to the levy and collection of the special  
9 assessments, as described in the assessment contract.

10 (i) The total special assessments levied against a property under an  
11 assessment contract shall not exceed the sum of the cost of the project,  
12 including any energy audits or inspections, or portion thereof, financed by  
13 the efficiency improvement development board, in addition to any  
14 administration fees, interest and other financing costs reasonably required  
15 by the efficiency improvement development board. Nothing herein shall be  
16 construed to prevent the efficiency improvement development board from  
17 entering into more than one assessment contract, with respect to a single  
18 parcel of real property, as long as each assessment contract relates to a  
19 separate project.

20 (j) The efficiency improvement development board shall provide a  
21 copy of each signed assessment contract to the local county assessor and  
22 county collector of the county where each benefited property is located,  
23 and shall cause a copy of such assessment contract to be recorded in the  
24 real estate records of such county's office of the recorder of deeds.

25 (k) Special assessments agreed to under an assessment contract shall  
26 be levied against the property by the applicable efficiency improvement  
27 development board as set forth in the assessment contract. Such special  
28 assessments shall be collected by the efficiency improvement development  
29 board with the same priority as ad valorem real property taxes. If such  
30 special assessments are not paid within the time period set forth in the  
31 assessment contract, such special assessments will be considered  
32 delinquent. Delinquent special assessments shall become a lien on the  
33 property against which the special assessments were imposed. Such  
34 delinquent special assessments shall be treated in the same manner and  
35 with the same priority as delinquent ad valorem real property taxes, and  
36 the efficiency improvement development board shall have the right to  
37 collect such delinquent special assessments, by initiating foreclosure  
38 proceedings under chapter 79 of the Kansas Statutes Annotated. Special  
39 assessments that are not yet delinquent pursuant to the terms of an  
40 assessment contract shall not be accelerated as part of any action or  
41 proceeding to collect delinquent special assessments. Such special  
42 assessments shall be collected as provided in this subsection from all  
43 subsequent property owners, including the state and all political

1 subdivisions thereof, for the term of the assessment contract.

2 (1) (1) An efficiency improvement development board may issue  
3 bonds payable from special assessment revenues generated by assessment  
4 contracts and any other revenues pledged thereto. The bonds shall be  
5 authorized by resolution of the efficiency improvement development board  
6 and shall bear such date or dates, be in such denominations, bear interest at  
7 such rate, be in such form, be issued in such manner, be payable in such  
8 place or places, be subject to redemption and shall mature at such time or  
9 times as the resolution shall specify, provided that the term of any bonds  
10 shall not exceed the weighted average useful life of the project.

11 (2) Any bonds issued under this section shall not constitute an  
12 indebtedness of the state or any municipality. Neither the state nor any  
13 municipality shall be liable on such bonds and the form of such bonds  
14 shall contain a statement to such effect.

15 Sec. 2. This act shall take effect and be in force from and after its  
16 publication in the statute book.