

AMENDMENTS TO LB1012

Introduced by Urban Affairs.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 9 of this act shall be known and may be
4 cited as the Property Assessed Clean Energy Act.

5 Sec. 2. The Legislature finds that:

6 (1) Energy efficiency and the use of renewable energy are important
7 for preserving the health and economic well-being of Nebraska's citizens.
8 Using less energy decreases the cost of living and keeps the cost of
9 public power low by delaying the need for additional power plants. By
10 building the market for energy efficiency and renewable energy products,
11 new jobs will be created for Nebraskans in the energy efficiency and
12 renewable energy job sectors;

13 (2) To further these goals, the state should promote energy
14 efficiency improvements and renewable energy systems;

15 (3) The upfront costs for energy efficiency improvements and
16 renewable energy systems prohibit many property owners from making
17 improvements. Therefore, it is necessary to authorize municipalities to
18 implement an alternative financing method through the creation of clean
19 energy assessment districts; and

20 (4) A public purpose will be served by providing municipalities with
21 the authority to finance the installation of energy efficiency
22 improvements and renewable energy systems through the creation of clean
23 energy assessment districts.

24 Sec. 3. For purposes of the Property Assessed Clean Energy Act:

25 (1) Assessment contract means a contract entered into between a
26 municipality and a property owner under which the municipality agrees to
27 provide financing for an energy project in exchange for a property

1 owner's agreement to pay an annual assessment for a period not to exceed
2 the weighted average useful life of the energy project;

3 (2) Clean energy assessment district means a district created by a
4 municipality to provide financing for energy projects;

5 (3) Energy efficiency improvement means any acquisition,
6 installation, or modification benefiting publicly or privately owned
7 property that is designed to reduce the electric, gas, water, or other
8 utility consumption of the buildings on or to be constructed on such
9 property or to promote the efficient and effective management of natural
10 resources, including, but not limited to:

11 (a) Insulation in walls, roofs, floors, foundations, or heating and
12 cooling distribution systems;

13 (b) Storm windows and doors; multiglazed windows and doors; heat-
14 absorbing or heat-reflective glazed and coated window and door systems;
15 and additional glazing, reductions in glass area, and other window and
16 door system modifications that reduce energy consumption;

17 (c) Automated energy control systems;

18 (d) Heating, ventilating, or air conditioning and distribution
19 system modifications or replacements;

20 (e) Caulking, weatherstripping, and air sealing;

21 (f) Replacement or modification of lighting fixtures to reduce the
22 energy use of the lighting system;

23 (g) Energy recovery systems;

24 (h) Daylighting systems;

25 (i) Installation or upgrade of electrical wiring or outlets to
26 charge a motor vehicle that is fully or partially powered by electricity;

27 (j) Facilities providing for water conservation or pollutant
28 control;

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

31 (l) Installation of energy-efficient fixtures, including, but not

1 limited to, water heating systems, escalators, and elevators;

2 (m) Energy efficiency related items so long as the cost of such
3 energy efficiency related items financed by the municipality does not
4 exceed twenty-five percent of the total cost of the energy project; and

5 (n) Any other installation or modification of equipment, devices, or
6 materials approved as a utility cost-saving measure by the municipality;

7 (4) Energy efficiency related item means any repair, replacement,
8 improvement, or modification to real property that is necessary or
9 desirable in conjunction with an energy efficiency improvement,
10 including, but not limited to, structural support improvements and the
11 repair or replacement of any building components, paved surfaces, or
12 fixtures disrupted or altered by the installation of an energy efficiency
13 improvement;

14 (5) Energy project means the installation or modification of an
15 energy efficiency improvement or the acquisition, installation, or
16 improvement of a renewable energy system;

17 (6) Municipality means any city or village in this state;

18 (7) Qualifying property means any of the following types of property
19 located within a municipality:

20 (a) Commercial property, including multi-family residential property
21 comprised of more than four dwelling units;

22 (b) Industrial property; or

23 (c) Single-family residential property, which may include up to four
24 dwelling units;

25 (8)(a) Renewable energy resource means a resource that naturally
26 replenishes over time and that minimizes the output of toxic material in
27 the conversion to energy. Renewable energy resource includes, but is not
28 limited to, the following:

29 (i) Biomass;

30 (ii) Solar and solar thermal energy;

31 (iii) Wind energy;

- 1 (iv) Geothermal energy;
- 2 (v) Methane gas captured from a landfill or elsewhere;
- 3 (vi) Photovoltaic systems; and
- 4 (vii) Cogeneration and trigeneration systems; and

5 (b) Renewable energy resource does not include petroleum, nuclear
6 power, natural gas, or coal; and

7 (9) Renewable energy system means a fixture, product, device, or
8 interacting group of fixtures, products, or devices on the customer's
9 side of the meter that uses one or more renewable energy resources to
10 generate electricity. Renewable energy system includes a biomass stove
11 but does not include an incinerator.

12 Sec. 4. (1) Pursuant to the procedures provided in this section, a
13 municipality may, from time to time, create one or more clean energy
14 assessment districts. Such districts may be separate, overlapping, or
15 coterminous. The governing body of the municipality shall be the
16 governing body for any district so created.

17 (2) Prior to creating any clean energy assessment district, the
18 municipality shall hold a public hearing at which the public may comment
19 on the creation of such district. Notice of the public hearing shall be
20 given by publication in a legal newspaper in or of general circulation in
21 the municipality at least ten days prior to the hearing.

22 (3) After the public hearing, the municipality may create a clean
23 energy assessment district by ordinance. The ordinance shall include:

24 (a) A finding that the financing of energy projects is a valid
25 public purpose;

26 (b) A contract form to be used for assessment contracts between the
27 municipality and the owner of the qualifying property governing the terms
28 and conditions of financing and assessment;

29 (c) Identification of an official authorized to enter into
30 assessment contracts on behalf of the municipality;

31 (d) An application process and eligibility requirements for

1 financing energy projects;

2 (e) An explanation of how annual assessments will be made and
3 collected;

4 (f) For energy projects involving residential property, a
5 requirement that any interest rate on assessment installments must be a
6 fixed rate;

7 (g) For energy projects involving residential property, a
8 requirement that the repayment period for assessments must be according
9 to a fixed repayment schedule;

10 (h) Information regarding the following, to the extent known, or
11 procedures to determine the following in the future:

12 (i) Any reserve fund to be used as security for bonds; and

13 (ii) Any application, administration, or other program fees to be
14 charged to owners participating in the program that will be used to
15 finance costs incurred by the municipality as a result of the program;

16 (i) A requirement that the term of the annual assessments not exceed
17 the weighted average useful life of the energy project paid for by the
18 assessments;

19 (j) A requirement for an appropriate ratio of the amount of the
20 annual assessment to the assessed value of the qualifying property;

21 (k) A requirement that any energy efficiency improvement that is not
22 permanently affixed to the qualifying property upon which an annual
23 assessment is imposed to repay the cost of such energy efficiency
24 improvement must be conveyed with the qualifying property if a transfer
25 of ownership of the qualifying property occurs;

26 (l) A requirement that, prior to the effective date of any contract
27 that binds the purchaser to purchase qualifying property upon which an
28 annual assessment is imposed, the owner shall provide notice to the
29 purchaser that the purchaser assumes responsibility for payment of the
30 annual assessment as provided in subdivision (3)(d) of section 5 of this
31 act;

1 (m) Provisions for marketing and participant education;

2 (n) Provisions for an adequate debt service reserve fund;

3 (o) A requirement that after the energy project is completed, the
4 municipality shall obtain verification that the renewable energy system
5 or energy efficiency improvement was properly installed and is operating
6 as intended; and

7 (p) For an energy project financed with more than two hundred fifty
8 thousand dollars in annual assessments, a requirement for ongoing
9 measurements that establish the savings realized by the record owner of
10 the qualifying property from the energy project.

11 Sec. 5. (1) After passage of an ordinance under section 4 of this
12 act, a municipality may enter into an assessment contract with the record
13 owner of qualifying property within a clean energy assessment district to
14 finance an energy project on the qualifying property. The costs financed
15 under the assessment contract may include the cost of materials and labor
16 necessary for installation, permit fees, inspection fees, application and
17 administrative fees, bank fees, and all other fees that may be incurred
18 by the owner pursuant to the installation. The assessment contract may
19 provide for the repayment of all such costs through annual assessments
20 upon the qualifying property benefited by the energy project. A
21 municipality may not impose an annual assessment under the Property
22 Assessed Clean Energy Act unless such annual assessment is part of an
23 assessment contract entered into under this section.

24 (2) Before entering into an assessment contract with an owner under
25 this section, the municipality shall verify:

26 (a) In all cases involving qualifying property other than single-
27 family residential property, that the owner has obtained an acknowledged
28 and verified written consent and subordination agreement executed by each
29 mortgage holder, trust deed beneficiary, loan servicer, or other holder
30 of a lien against such qualifying property stating that the mortgagee,
31 beneficiary, loan servicer, or other lienholder consents to the

1 imposition of the annual assessment and that the priority of the
2 mortgage, trust deed, or other lien is subordinated to the PACE lien
3 established in section 6 of this act. The consent and subordination
4 agreement shall be in a form and substance acceptable to each mortgagee,
5 beneficiary, loan servicer, or other lienholder and shall be recorded in
6 the office of the register of deeds of the county in which the qualifying
7 property is located;

8 (b) That there are no delinquent taxes, special assessments, water
9 or sewer charges, or any other assessments levied on the qualifying
10 property; that there are no involuntary liens, including, but not limited
11 to, construction liens, on the qualifying property; and that the owner of
12 the qualifying property is current on all debt secured by a mortgage or
13 trust deed encumbering or otherwise securing the qualifying property;

14 (c) That there are no delinquent annual assessments on the
15 qualifying property which were imposed to pay for a different energy
16 project under the Property Assessed Clean Energy Act; and

17 (d) That there are sufficient resources to complete the energy
18 project and that the estimated economic benefit, including, but not
19 limited to, energy cost savings, maintenance cost savings, and other
20 property operating savings expected from the energy project during the
21 financing period, is equal to or greater than the principal cost of the
22 energy project.

23 (3) Upon completion of the verifications required under subsection
24 (2) of this section, an assessment contract may be executed by the
25 municipality and the owner of the qualifying property and shall provide:

26 (a) A description of the energy project, including the estimated
27 cost of the energy project and a description of the estimated savings
28 prepared in accordance with standards acceptable to the municipality;

29 (b) A mechanism for:

30 (i) Verifying the final costs of the energy project upon its
31 completion; and

1 (ii) Ensuring that any amounts advanced, financed, or otherwise paid
2 by the municipality toward the costs of the energy project will not
3 exceed the final cost of the energy project;

4 (c) An agreement by the property owner to pay annual assessments for
5 a period not to exceed the weighted average useful life of the energy
6 project;

7 (d) A statement that the obligations set forth in the assessment
8 contract, including the obligation to pay annual assessments, are a
9 covenant that shall run with the land and be obligations upon future
10 owners of the qualifying property; and

11 (e) An acknowledgment that no subdivision of qualifying property
12 subject to the assessment contract shall be valid unless the assessment
13 contract or an amendment to such contract divides the total annual
14 assessment due between the newly subdivided parcels pro rata to the
15 special benefit realized by each subdivided parcel.

16 (4) The total annual assessments levied against qualifying property
17 under an assessment contract shall not exceed the sum of the cost of the
18 energy project, including any energy audits or inspections or portion
19 thereof financed by the municipality, plus such administration fees,
20 interest, and other financing costs reasonably required by the
21 municipality.

22 (5) Nothing in the Property Assessed Clean Energy Act shall be
23 construed to prevent a municipality from entering into more than one
24 assessment contract with respect to a single parcel of real property so
25 long as each assessment contract relates to a separate energy project and
26 subdivision (2)(c) of this section is not violated.

27 (6) The municipality shall provide a copy of each signed assessment
28 contract to the county assessor of the county in which the qualifying
29 property is located, and the obligations set forth in the assessment
30 contract shall run with the qualifying property.

31 (7) Annual assessments agreed to under an assessment contract shall

1 be levied and collected against the qualifying property as set forth in
2 the assessment contract.

3 (8) Collection of annual assessments shall only be sought from the
4 original owners or subsequent purchasers of qualifying property subject
5 to an assessment contract.

6 Sec. 6. (1) Upon becoming delinquent on the payment of an annual
7 assessment imposed under the Property Assessed Clean Energy Act, such
8 assessment, including any interest on the assessment and any penalty,
9 constitutes a PACE lien against the qualifying property on which the
10 assessment is imposed until the assessment, including any interest and
11 penalty, is paid in full. Any annual assessment that is not paid within
12 the time period set forth in the assessment contract shall be considered
13 delinquent. The municipality shall, within fourteen days after an annual
14 assessment becomes delinquent, record a notice of such lien in the office
15 of the register of deeds of the county in which the qualifying property
16 is located. A notice of lien filed under this subsection shall, at a
17 minimum, include:

18 (a) The amount of funds disbursed or to be disbursed pursuant to the
19 assessment contract;

20 (b) The names and addresses of the current owners of the qualifying
21 property subject to the annual assessment;

22 (c) The legal description of the qualifying property subject to the
23 annual assessment;

24 (d) The duration of the assessment contract; and

25 (e) The name and address of the municipality filing the notice.

26 (2) The PACE lien created under this section shall:

27 (a) In all cases involving qualifying property that is single-family
28 residential property, (i) be subordinate to all liens on the qualifying
29 property recorded prior to the time the notice of the PACE lien is
30 recorded, (ii) be subordinate to a first mortgage or trust deed on the
31 qualifying property recorded after the notice of the PACE lien is

1 recorded, and (iii) have priority over any other lien on the qualifying
2 property recorded after the notice of the PACE lien is recorded; and

3 (b) In all cases involving qualifying property other than single-
4 family residential property and subject to the requirement in subdivision
5 (2)(a) of section 5 of this act to obtain and record an executed consent
6 and subordination agreement, have the same priority and status as real
7 property tax or special assessment liens.

8 (3) When the annual assessment, including any interest and penalty,
9 is paid in full, a release of the PACE lien shall be recorded in the
10 office of the register of deeds of the county in which the notice of the
11 PACE lien was recorded.

12 (4) If the holder or loan servicer of any existing mortgage or trust
13 deed that encumbers or that is otherwise secured by the qualifying
14 property has established a payment schedule or escrow account to accrue
15 property taxes or insurance, such holder or loan servicer may increase
16 the required monthly payment, if any, by an amount necessary to pay the
17 annual assessment imposed under the Property Assessed Clean Energy Act.

18 Sec. 7. (1) A municipality may raise capital to finance energy
19 projects undertaken pursuant to an assessment contract entered into under
20 the Property Assessed Clean Energy Act. Such capital may come from any of
21 the following:

22 (a) The sale of bonds;

23 (b) Amounts to be advanced by the municipality through funds
24 available to it from any other source; or

25 (c) Third-party lending.

26 (2) Bonds issued under subsection (1) of this section shall not be
27 general obligations of the municipality, shall be nonrecourse, and shall
28 not be backed by the full faith and credit of the issuer, the
29 municipality, or the state, but shall only be secured by payments of
30 annual assessments by owners of qualifying property within the clean
31 energy assessment district or districts specified who are subject to an

1 assessment contract under section 5 of this act.

2 (3) Any single bond issuance by a municipality for purposes of the
3 Property Assessed Clean Energy Act shall not exceed five million dollars
4 without a vote of the residents of such municipality.

5 (4) A pledge of annual assessments, funds, or contractual rights
6 made in connection with the issuance of bonds by a municipality
7 constitutes a statutory lien on the annual assessments, funds, or
8 contractual rights so pledged in favor of the person or persons to whom
9 the pledge is given without further action by the municipality. The
10 statutory lien is valid and binding against all other persons, with or
11 without notice.

12 (5) Bonds of one series issued under the Property Assessed Clean
13 Energy Act may be secured on a parity with bonds of another series issued
14 by the municipality pursuant to the terms of a master indenture or master
15 resolution entered into or adopted by the municipality.

16 (6) Bonds issued under the act, and interest payable on such bonds,
17 are exempt from all taxation by this state and its political
18 subdivisions.

19 (7) Bonds issued under the act further essential public and
20 governmental purposes, including, but not limited to, reduced energy
21 costs, reduced greenhouse gas emissions, economic stimulation and
22 development, improved property valuation, and increased employment.

23 Sec. 8. (1) Two or more municipalities may enter into an agreement
24 pursuant to the Interlocal Cooperation Act for the creation,
25 administration, or creation and administration of clean energy assessment
26 districts.

27 (2) If the creation of clean energy assessment districts is
28 implemented jointly by two or more municipalities, a single public
29 hearing held jointly by the cooperating municipalities is sufficient to
30 satisfy the requirements of section 4 of this act.

31 Sec. 9. Any municipality that creates a clean energy assessment

1 district under the Property Assessed Clean Energy Act shall, on or before
2 January 31 of each year, electronically submit a report to the Urban
3 Affairs Committee of the Legislature on the following:

4 (1) The number of clean energy assessment districts in the
5 municipality and their location;

6 (2) The total dollar amount of energy projects undertaken pursuant
7 to the act;

8 (3) The total dollar amount of outstanding bonds issued under the
9 act;

10 (4) The total dollar amount of annual assessments collected as of
11 the end of the most recently completed calendar year and the total amount
12 of annual assessments yet to be collected pursuant to assessment
13 contracts signed under the act; and

14 (5) A description of the types of energy projects undertaken
15 pursuant to the act.

16 Sec. 10. The Revisor of Statutes shall assign sections 1 to 9 of
17 this act to Chapter 18.