

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1012

FINAL READING

Introduced by Mello, 5; Coash, 27; Cook, 13; Crawford, 45; Ebke, 32;
Haar, 21; Hansen, 26; Howard, 9; Hughes, 44; Krist, 10;
McCollister, 20.

Read first time January 15, 2016

Committee: Urban Affairs

- 1 A BILL FOR AN ACT relating to municipalities; to adopt the Property
- 2 Assessed Clean Energy Act; and to provide a duty for the Revisor of
- 3 Statutes.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known and may be
2 cited as the Property Assessed Clean Energy Act.

3 Sec. 2. The Legislature finds that:

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

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

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

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

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

23 (1) Assessment contract means a contract entered into between a
24 municipality, a property owner, and, if applicable, a third-party lender
25 under which the municipality agrees to provide financing for an energy
26 project in exchange for a property owner's agreement to pay an annual
27 assessment for a period not to exceed the weighted average useful life of
28 the energy project;

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

31 (3) Energy efficiency improvement means any acquisition,

1 installation, or modification benefiting publicly or privately owned
2 property that is designed to reduce the electric, gas, water, or other
3 utility demand or consumption of the buildings on or to be constructed on
4 such property or to promote the efficient and effective management of
5 natural resources or storm water, including, but not limited to:

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

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

12 (c) Automated energy control systems;

13 (d) Heating, ventilating, or air conditioning and distribution
14 system modifications or replacements;

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

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

18 (g) Energy recovery systems;

19 (h) Daylighting systems;

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

22 (j) Facilities providing for water conservation or pollutant
23 control;

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

26 (l) Installation of energy-efficient fixtures, including, but not
27 limited to, water heating systems, escalators, and elevators;

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

31 (n) Any other installation or modification of equipment, devices, or

1 materials approved as a utility cost-saving measure by the municipality;

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

9 (5) Energy project means the installation or modification of an
10 energy efficiency improvement or the acquisition, installation, or
11 improvement of a renewable energy system;

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

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

15 (a) Commercial property, including multifamily residential property
16 comprised of more than four dwelling units;

17 (b) Industrial property; or

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

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

24 (i) Nonhazardous biomass;

25 (ii) Solar and solar thermal energy;

26 (iii) Wind energy;

27 (iv) Geothermal energy;

28 (v) Methane gas captured from a landfill or elsewhere;

29 (vi) Photovoltaic systems; and

30 (vii) Cogeneration and trigeneration systems; and

31 (b) Renewable energy resource does not include petroleum, nuclear

1 power, natural gas, coal, or hazardous biomass; and

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

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

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

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

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

21 (b) A contract form to be used for assessment contracts between the
22 municipality, the owner of the qualifying property, and, if applicable, a
23 third-party lender governing the terms and conditions of financing and
24 annual assessments;

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

27 (d) An application process and eligibility requirements for
28 financing energy projects;

29 (e) An explanation of how annual assessments will be made and
30 collected;

31 (f) For energy projects involving residential property, a

1 requirement that any interest rate on assessment installments must be a
2 fixed rate;

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

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

8 (i) Provisions for an adequate debt service reserve fund created
9 under section 9 of this act, if applicable;

10 (ii) Provisions for an adequate loss reserve fund created under
11 section 8 of this act; and

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

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

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

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

29 (l) Provisions for marketing and participant education;

30 (m) A requirement that after the energy project is completed, the
31 municipality shall obtain verification that the renewable energy system

1 or energy efficiency improvement was properly installed and is operating
2 as intended;

3 (n) For an energy project financed with more than two hundred fifty
4 thousand dollars in annual assessments, a requirement for ongoing
5 measurements that establish the savings realized by the record owner of
6 the qualifying property from the energy project; and

7 (o) A requirement that the clean energy assessment district, with
8 respect to single-family residential property, comply with the Property
9 Assessed Clean Energy Act and with directives or guidelines issued by the
10 Federal Housing Administration and the Federal Housing Finance Agency on
11 or after January 1, 2016, relating to property assessed clean energy
12 financing.

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

27 (2) Before entering into an assessment contract with an owner and,
28 if applicable, a third-party lender under this section, the municipality
29 shall verify:

30 (a) In all cases involving qualifying property other than single-
31 family residential property, that the owner has obtained an acknowledged

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

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

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

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

24 (3) Upon completion of the verifications required under subsection
25 (2) of this section, an assessment contract may be executed by the
26 municipality, the owner of the qualifying property, and, if applicable, a
27 third-party lender and shall provide:

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

31 (b) A mechanism for:

1 (i) Verifying the final costs of the energy project upon its
2 completion; and

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

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

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

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

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

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

29 (6) The municipality shall provide a copy of each signed assessment
30 contract to the county assessor and register of deeds of the county in
31 which the qualifying property is located, and the register of deeds shall

1 record the assessment contract with the qualifying property.

2 (7) Annual assessments agreed to under an assessment contract shall
3 be levied against the qualifying property and collected at the same time
4 and in the same manner as property taxes are levied and collected.

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

8 Sec. 6. (1)(a) For qualifying property other than single-family
9 residential property, any annual assessment imposed on such qualifying
10 property that becomes delinquent, including any interest on the annual
11 assessment and any penalty, shall constitute a PACE lien against the
12 qualifying property on which the annual assessment is imposed until the
13 annual assessment, including any interest and penalty, is paid in full.
14 Any annual assessment that is not paid within the time period set forth
15 in the assessment contract shall be considered delinquent. The
16 municipality shall, within fourteen days after an annual assessment
17 becomes delinquent, record a notice of such lien in the office of the
18 register of deeds of the county in which the qualifying property is
19 located.

20 (b) For qualifying property that is single-family residential
21 property, all annual assessments imposed on such qualifying property,
22 including any interest on the annual assessments and any penalty, shall,
23 upon the initial annual assessment, constitute a PACE lien against the
24 qualifying property on which the annual assessments are imposed until all
25 annual assessments, including any interest and penalty, are paid in full.
26 Any annual assessment that is not paid within the time period set forth
27 in the assessment contract shall be considered delinquent. The
28 municipality shall, upon imposition of the initial annual assessment,
29 record a notice of such lien in the office of the register of deeds of
30 the county in which the qualifying property is located.

31 (2) A notice of lien filed under this section shall, at a minimum,

1 include:

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

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

6 (c) The legal description of the qualifying property subject to the
7 annual assessment;

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

9 (e) The name and address of the municipality filing the notice of
10 lien.

11 (3) The PACE lien created under this section shall:

12 (a) For qualifying property that is single-family residential
13 property, (i) be subordinate to all liens on the qualifying property
14 recorded prior to the time the notice of the PACE lien is recorded, (ii)
15 be subordinate to a first mortgage or trust deed on the qualifying
16 property recorded after the notice of the PACE lien is recorded, and
17 (iii) have priority over any other lien on the qualifying property
18 recorded after the notice of the PACE lien is recorded; and

19 (b) For qualifying property other than single-family residential
20 property and subject to the requirement in subdivision (2)(a) of section
21 5 of this act to obtain and record an executed consent and subordination
22 agreement, have the same priority and status as real property tax liens.

23 (4)(a) Notwithstanding any other provision of law, in the event of a
24 sale pursuant to a foreclosure or a sale pursuant to the exercise of a
25 power of sale under a trust deed relating to qualifying property that is
26 single-family residential property, the holders of any mortgages, trust
27 deeds, or other liens, including delinquent annual assessments secured by
28 PACE liens, shall receive proceeds in accordance with the priorities
29 established under subdivision (3)(a) of this section. In the event there
30 are insufficient proceeds from such a sale, from the loss reserve fund
31 established pursuant to section 8 of this act, or from any other means to

1 satisfy the delinquent annual assessments, such delinquent annual
2 assessments shall be extinguished. Any annual assessment that has not yet
3 become delinquent shall not be accelerated or extinguished in the event
4 of a sale pursuant to a foreclosure or a sale pursuant to the exercise of
5 a power of sale under a trust deed relating to qualifying property that
6 is single-family residential property. Upon the transfer of ownership of
7 qualifying property that is single-family residential property, including
8 a sale pursuant to a foreclosure or a sale pursuant to the exercise of a
9 power of sale under a trust deed, the nondelinquent annual assessments
10 shall continue as a lien on the qualifying property, subject to the
11 priorities established under subdivision (3)(a) of this section.

12 (b) Upon the transfer of ownership of qualifying property other than
13 single-family residential property, including a sale pursuant to a
14 foreclosure or a sale pursuant to the exercise of a power of sale under a
15 trust deed, the obligation to pay annual assessments shall run with the
16 qualifying property.

17 (5)(a) For qualifying property other than single-family residential
18 property, when the delinquent annual assessment, including any interest
19 and penalty, is paid in full, a release of the PACE lien shall be
20 recorded in the office of the register of deeds of the county in which
21 the notice of the PACE lien was recorded.

22 (b) For qualifying property that is single-family residential
23 property, when all annual assessments, including any interest and
24 penalty, are paid in full, a release of the PACE lien shall be recorded
25 in the office of the register of deeds of the county in which the notice
26 of the PACE lien was recorded.

27 (6) If the holder or loan servicer of any existing mortgage or trust
28 deed that encumbers or that is otherwise secured by the qualifying
29 property has established a payment schedule or escrow account to accrue
30 property taxes or insurance, such holder or loan servicer may increase
31 the required monthly payment, if any, by an amount necessary to pay the

1 annual assessment imposed under the Property Assessed Clean Energy Act.

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

6 (a) The sale of bonds;

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

9 (c) Third-party lending.

10 (2) Bonds issued under subsection (1) of this section shall not be
11 general obligations of the municipality, shall be nonrecourse, and shall
12 not be backed by the full faith and credit of the issuer, the
13 municipality, or the state, but shall only be secured by payments of
14 annual assessments by owners of qualifying property within the clean
15 energy assessment district or districts specified who are subject to an
16 assessment contract under section 5 of this act.

17 (3) Any single bond issuance by a municipality for purposes of the
18 Property Assessed Clean Energy Act shall not exceed five million dollars
19 without a vote of the registered voters of such municipality.

20 (4) A pledge of annual assessments, funds, or contractual rights
21 made in connection with the issuance of bonds by a municipality
22 constitutes a statutory lien on the annual assessments, funds, or
23 contractual rights so pledged in favor of the person or persons to whom
24 the pledge is given without further action by the municipality. The
25 statutory lien is valid and binding against all other persons, with or
26 without notice.

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

31 (6) Bonds issued under the act, and interest payable on such bonds,

1 are exempt from all taxation by this state and its political
2 subdivisions.

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

7 (8) The Property Assessed Clean Energy Act shall not be used to
8 finance an energy project on qualifying property owned by a municipality
9 or any other political subdivision of the State of Nebraska without
10 having first been approved by a vote of the registered voters of such
11 municipality or political subdivision owning the qualifying property.
12 Such vote shall be taken at a special election called for such purpose or
13 at an election held in conjunction with a statewide or local primary or
14 general election.

15 Sec. 8. (1) A municipality that has created a clean energy
16 assessment district shall create a loss reserve fund for:

17 (a) The payment of any delinquent annual assessments for qualifying
18 property that is single-family residential property in the event that
19 there is a sale pursuant to a foreclosure or a sale pursuant to the
20 exercise of a power of sale under a trust deed of such qualifying
21 property and the proceeds resulting from such a sale are, after all
22 superior liens have been satisfied, insufficient to pay the delinquent
23 annual assessments. Payments from the loss reserve fund under this
24 subdivision may only be made with respect to delinquent annual
25 assessments imposed upon qualifying property that is single-family
26 residential property, with no more than one such payment to be made for
27 the same qualifying property; and

28 (b) The payment of annual assessments imposed upon qualifying
29 property that is single-family residential property subsequent to a sale
30 pursuant to a foreclosure or a sale pursuant to the exercise of a power
31 of sale under a trust deed in which the mortgagee or beneficiary becomes

1 the owner of such qualifying property. Payments from the loss reserve
2 fund under this subdivision may only be made with respect to annual
3 assessments imposed upon qualifying property that is single-family
4 residential property subsequent to the date on which the mortgagee or
5 beneficiary became the owner of such qualifying property and until the
6 qualifying property is conveyed by the mortgagee or beneficiary, with no
7 more than one such payment to be made for the same qualifying property.

8 (2) The loss reserve fund may be funded by state and federal
9 sources, the proceeds of bonds issued pursuant to the Property Assessed
10 Clean Energy Act, third-party capital, and participating property owners.
11 The loss reserve fund shall only be used to provide payment of annual
12 assessments as provided in this section and for the costs of
13 administering the loss reserve fund.

14 (3) The loss reserve fund shall not be funded by, and payment of
15 annual assessments and costs of administering the loss reserve fund shall
16 not be made from, the general fund of any municipality.

17 Sec. 9. A municipality that has created a clean energy assessment
18 district may create a debt service reserve fund to be used as security
19 for capital raised under section 7 of this act.

20 Sec. 10. (1) Two or more municipalities may enter into an agreement
21 pursuant to the Interlocal Cooperation Act for the creation,
22 administration, or creation and administration of clean energy assessment
23 districts.

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

28 (3) A municipality or municipalities may contract with a third party
29 for the administration of clean energy assessment districts.

30 Sec. 11. Any municipality that creates a clean energy assessment
31 district under the Property Assessed Clean Energy Act shall, on or before

1 January 31 of each year, electronically submit a report to the Urban
2 Affairs Committee of the Legislature on the following:

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

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

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

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

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

15 Sec. 12. The Revisor of Statutes shall assign sections 1 to 11 of
16 this act to Chapter 18.