

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1012

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.
- 3 Be it enacted by the people of the State of Nebraska,

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

3 Sec. 2. The Legislature finds:

4 (1) That energy efficiency and the use of renewable energy are
5 important for preserving the health and economic well-being of Nebraska's
6 citizens. Using less energy decreases the cost of living and keeps the
7 cost of public power low by delaying the need for additional power
8 plants. By building the market for energy efficiency and renewable energy
9 products, new jobs will be created for Nebraskans in the energy
10 efficiency and 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) That a public purpose will be served by providing municipalities
19 with 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) Clean energy assessment district means a district created by a
24 municipality to provide financing for energy projects;

25 (2) Energy efficiency improvement means any acquisition,
26 installation, or modification benefiting publicly or privately owned
27 property that is designed to reduce the electric, gas, water, or other
28 utility consumption of the buildings on such property or to promote the
29 efficient and effective management of natural resources or stormwater,
30 including, but not limited to:

31 (a) Insulation in walls, roofs, floors, foundations, or heating and

1 cooling distribution systems;

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

6 (c) Automated energy control systems;

7 (d) Heating, ventilating, or air conditioning and distribution
8 system modifications or replacements;

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

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

12 (g) Energy recovery systems;

13 (h) Day lighting systems;

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

16 (j) Facilities providing for water conservation or pollutant
17 control;

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

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

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

24 (3) Energy project means the installation or modification of an
25 energy efficiency improvement or the acquisition, installation, or
26 improvement of a renewable energy system;

27 (4) Municipality means any city or village in this state;

28 (5) Qualifying property means any of the following types of property
29 located within a municipality:

30 (a) Commercial property;

31 (b) Industrial property; or

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

3 (6)(a) Renewable energy resource means a resource that naturally
4 replenishes over time and that minimizes the output of toxic material in
5 the conversion to energy. Renewable energy resource includes, but is not
6 limited to, the following:

7 (i) Biomass;

8 (ii) Solar and solar thermal energy;

9 (iii) Wind energy;

10 (iv) Geothermal energy;

11 (v) Methane gas captured from a landfill;

12 (vi) Photovoltaic systems; and

13 (vii) Cogeneration and trigeneration systems.

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

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

21 Sec. 4. (1) Pursuant to the procedures provided in this section, a
22 municipality may, from time to time, create one or more clean energy
23 assessment districts, and such districts may be separate, overlapping, or
24 coterminous. The governing body of the municipality shall be the
25 governing body for any district so created.

26 (2) Prior to creating any clean energy assessment district, the
27 municipality shall hold a public hearing at which the public may comment
28 on the creation of such district. Notice of the public hearing shall be
29 given by publication in a legal newspaper of general circulation in the
30 municipality at least ten days prior to the hearing.

31 (3) After the public hearing, the municipality may create a clean

1 energy assessment district by ordinance. The ordinance shall include:

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

4 (b) The types of energy projects that may be financed;

5 (c) A contract form to be used for contracts between the
6 municipality and the owner of the qualifying property governing the terms
7 and conditions of financing and assessment;

8 (d) Identification of an official authorized to enter into a
9 contract on behalf of the municipality;

10 (e) A maximum aggregate annual dollar amount for all financing to be
11 provided by the municipality;

12 (f) An application process and eligibility requirements for
13 financing energy projects;

14 (g) A method for determining interest rates on assessment
15 installments. Any such interest rate must be a fixed rate;

16 (h) A method for determining repayment periods. Any such repayment
17 period must be according to a fixed repayment schedule;

18 (i) A method for determining the maximum amount of an assessment;

19 (j) An explanation of how assessments will be made and collected
20 consistent with section 6 of this act;

21 (k) A plan for raising capital to finance energy projects. The plan
22 may include any of the following:

23 (i) The sale of bonds;

24 (ii) Amounts to be advanced by the municipality through funds
25 available to it from any other source; and

26 (iii) Third-party lending;

27 (l) Information regarding the following, to the extent known, or
28 procedures to determine the following in the future:

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

30 (ii) Any application, administration, or other program fees to be
31 charged to owners participating in the program that will be used to

1 finance costs incurred by the municipality as a result of the program;

2 (m) A requirement that the term of an assessment not exceed the
3 useful life of the energy project paid for by the assessment;

4 (n) A requirement for an appropriate ratio of the amount of the
5 assessment to the assessed value of the qualifying property;

6 (o) A requirement that any energy efficiency improvement that is not
7 permanently affixed to the qualifying property must be conveyed with the
8 qualifying property if a transfer of ownership occurs;

9 (p) A requirement that the record owner of qualifying property
10 subject to a mortgage or trust deed obtain written consent from the
11 mortgage holder, trust deed beneficiary, or loan servicer before
12 participating in the program;

13 (q) Provisions for marketing and participant education;

14 (r) Provisions for an adequate debt service reserve fund;

15 (s) Quality assurance and antifraud measures;

16 (t) A requirement that a baseline energy audit be conducted before
17 an energy project is undertaken to establish future energy savings;

18 (u) A requirement that after the energy project is completed, the
19 municipality shall obtain verification that the renewable energy system
20 or energy efficiency improvement was properly installed and is operating
21 as intended; and

22 (v) For an energy project financed with more than two hundred fifty
23 thousand dollars in assessments;

24 (i) A requirement for ongoing measurements that establish the
25 savings realized by the record owner from the energy project; and

26 (ii) A requirement that, in the contract for installation of the
27 energy project, the contractor guarantee to the owner that the energy
28 project will achieve a savings-to-investment ratio greater than one and
29 agree to pay the owner, on an annual basis, any shortfall in savings
30 below this level.

31 Sec. 5. (1) After passage of an ordinance under section 4 of this

1 act, a municipality may enter into a contract with the record owner of
2 qualifying property within a clean energy assessment district to finance
3 an energy project on the qualifying property. The costs financed under
4 the contract may include the cost of materials and labor necessary for
5 installation, permit fees, inspection fees, application and
6 administrative fees, bank fees, and all other fees that may be incurred
7 by the owner pursuant to the installation. The contract may provide for
8 the repayment of all such costs through assessments upon the qualifying
9 property benefited by the energy project. A municipality may not impose
10 an assessment under the Property Assessed Clean Energy Act unless such
11 assessment is part of a contract entered into under this section.

12 (2) Before entering into a contract with an owner under this
13 section, the municipality shall verify:

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

20 (b) That there are no delinquent assessments on the qualifying
21 property which were imposed to pay for a different energy project under
22 the Property Assessed Clean Energy Act.

23 Sec. 6. (1) An assessment imposed under the Property Assessed Clean
24 Energy Act, including any interest on the assessment and any penalty,
25 constitutes a PACE lien against the qualifying property on which the
26 assessment is imposed until the assessment, including any interest and
27 penalty, is paid in full. The municipality shall record a notice of such
28 lien in the office of the register of deeds of the county in which the
29 qualifying property is located. A notice filed under this subsection
30 shall, at a minimum, include:

31 (a) The amount of funds disbursed or to be disbursed pursuant to the

1 contract;

2 (b) The names and addresses of the current owners of the qualifying
3 property subject to the assessment;

4 (c) The legal description of the qualifying property subject to the
5 assessment;

6 (d) The duration of the contract; and

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

8 (2) The PACE lien created under this section shall run with the
9 qualifying property and shall (a) be subordinate to all liens on the
10 qualifying property recorded prior to the time the notice of PACE lien is
11 recorded, (b) be subordinate to a first mortgage or trust deed on the
12 qualifying property recorded after the notice of PACE lien is recorded,
13 and (c) have priority over any other lien on the qualifying property
14 recorded after the notice of PACE lien is recorded. This subsection shall
15 not affect the status or priority of any real property tax or special
16 assessment lien.

17 (3) When the assessment, including any interest and penalty, is paid
18 in full, a release of the PACE lien shall be recorded in the office of
19 the register of deeds of the county in which the PACE lien was recorded.

20 (4) If the holder or loan servicer of any existing mortgage or trust
21 deed encumbering or otherwise secured by the qualifying property has
22 established a payment schedule or escrow account to accrue property taxes
23 or insurance, such holder or loan servicer may increase the required
24 monthly payment, if any, by an amount necessary to annually pay the
25 assessment imposed under the Property Assessed Clean Energy Act.

26 Sec. 7. (1) A municipality may issue bonds to finance energy
27 projects undertaken pursuant to a contract entered into under the
28 Property Assessed Clean Energy Act.

29 (2) Bonds issued under subsection (1) of this section shall not be
30 general obligations of the municipality, but shall be secured by one or
31 more of the following as provided in the resolution or ordinance

1 approving the bonds:

2 (a) Payments of assessments on benefited qualifying property within
3 the clean energy assessment district or districts specified;

4 (b) Reserves established by the municipality from grants, bond
5 proceeds, or other sources; or

6 (c) Municipal bond insurance, lines or letters of credit, public or
7 private guaranties, standby bond purchase agreements, collateral
8 assignments, mortgages, and any other available means of providing credit
9 support or liquidity.

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

16 (4) Bonds of one series issued under the Property Assessed Clean
17 Energy Act may be secured on a parity with bonds of another series issued
18 by the municipality pursuant to the terms of a master indenture or master
19 resolution entered into or adopted by the municipality.

20 (5) Bonds issued under the act, and interest payable on such bonds,
21 are exempt from all taxation by this state and its political
22 subdivisions.

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

27 Sec. 8. (1) Two or more municipalities may enter into an agreement
28 pursuant to the Interlocal Cooperation Act for the creation of clean
29 energy assessment districts.

30 (2) If the creation of clean energy assessment districts is
31 implemented jointly by two or more municipalities, a single public

1 hearing held jointly by the cooperating municipalities is sufficient to
2 satisfy the requirements of section 4 of this act.

3 Sec. 9. Any municipality that creates a clean energy assessment
4 district under the Property Assessed Clean Energy Act shall, on or before
5 January 31 of each year, electronically submit a report to the Urban
6 Affairs Committee of the Legislature on the following:

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

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

11 (3) The total dollar amount of outstanding bonds issued under the
12 act;

13 (4) The total dollar amount of assessments collected as of the end
14 of the most recently completed calendar year and the total amount of
15 assessments yet to be collected pursuant to contracts signed under the
16 act; and

17 (5) A description of the types of energy projects undertaken
18 pursuant to the act.