

LEGISLATIVE BILL 1012

Approved by the Governor April 13, 2016

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

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

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

Sec. 2. The Legislature finds that:

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

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

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

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

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

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

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

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

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

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

(c) Automated energy control systems;

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

(e) Caulking, weatherstripping, and air sealing;

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

(g) Energy recovery systems;

(h) Daylighting systems;

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

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

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

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

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

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

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

(5) Energy project means the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a

renewable energy system;

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

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

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

(b) Industrial property; or

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

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

(i) Nonhazardous biomass;

(ii) Solar and solar thermal energy;

(iii) Wind energy;

(iv) Geothermal energy;

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

(vi) Photovoltaic systems; and

(vii) Cogeneration and trigeneration systems; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) Provisions for marketing and participant education;

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

(n) For an energy project financed with more than two hundred fifty

thousand dollars in annual assessments, a requirement for ongoing measurements that establish the savings realized by the record owner of the qualifying property from the energy project; and

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

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

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

(a) In all cases involving qualifying property other than single-family residential property, that the owner has obtained an acknowledged and verified written consent and subordination agreement executed by each mortgage holder or trust deed beneficiary stating that the mortgagee or beneficiary consents to the imposition of the annual assessment and that the priority of the mortgage or trust deed is subordinated to the PACE lien established in section 6 of this act. The consent and subordination agreement shall be in a form and substance acceptable to each mortgagee or beneficiary and shall be recorded in the office of the register of deeds of the county in which the qualifying property is located;

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

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

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

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

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

(b) A mechanism for:

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

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

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

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

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

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

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

(6) The municipality shall provide a copy of each signed assessment

contract to the county assessor and register of deeds of the county in which the qualifying property is located, and the register of deeds shall record the assessment contract with the qualifying property.

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

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

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

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

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

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

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

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

(d) The duration of the assessment contract; and

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

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

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

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

(4)(a) Notwithstanding any other provision of law, in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family residential property, the holders of any mortgages, trust deeds, or other liens, including delinquent annual assessments secured by PACE liens, shall receive proceeds in accordance with the priorities established under subdivision (3)(a) of this section. In the event there are insufficient proceeds from such a sale, from the loss reserve fund established pursuant to section 8 of this act, or from any other means to satisfy the delinquent annual assessments, such delinquent annual assessments shall be extinguished. Any annual assessment that has not yet become delinquent shall not be accelerated or extinguished in the event of a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed relating to qualifying property that is single-family residential property. Upon the transfer of ownership of qualifying property that is single-family residential property, including a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed, the nondelinquent annual assessments shall continue as a lien on the qualifying property, subject to the priorities established under subdivision (3)(a) of this section.

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

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

(b) For qualifying property that is single-family residential property, when all annual assessments, including any interest and penalty, are paid in full, a release of the PACE lien shall be recorded in the office of the

register of deeds of the county in which the notice of the PACE lien was recorded.

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

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

(a) The sale of bonds;

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

(c) Third-party lending.

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

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

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

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

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

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

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

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

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

(b) The payment of annual assessments imposed upon qualifying property that is single-family residential property subsequent to a sale pursuant to a foreclosure or a sale pursuant to the exercise of a power of sale under a trust deed in which the mortgagee or beneficiary becomes the owner of such qualifying property. Payments from the loss reserve fund under this subdivision may only be made with respect to annual assessments imposed upon qualifying property that is single-family residential property subsequent to the date on which the mortgagee or beneficiary became the owner of such qualifying property and until the qualifying property is conveyed by the mortgagee or beneficiary, with no more than one such payment to be made for the same qualifying property.

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

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

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

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

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

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

Sec. 11. Any municipality that creates a clean energy assessment district under the Property Assessed Clean Energy Act shall, on or before January 31 of each year, electronically submit a report to the Urban Affairs Committee of the Legislature on the following:

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

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

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

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

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

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