

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 23

FINAL READING

Introduced by Kolterman, 24.

Read first time January 10, 2019

Committee: Urban Affairs

1 A BILL FOR AN ACT relating to the Property Assessed Clean Energy Act; to
2 amend sections 13-3202, 13-3203, 13-3204, and 13-3205, Revised
3 Statutes Cumulative Supplement, 2018; to change legislative
4 findings; to redefine terms; to change provisions relating to
5 requirements for ordinances or resolutions, assessment contracts,
6 and duties of municipalities; to harmonize provisions; to repeal the
7 original sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-3202, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 13-3202 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 economic development will be encouraged and new jobs will be created for
10 Nebraskans in the energy 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) Public purposes A ~~public purpose~~ will be served by providing
19 municipalities with the authority to finance the installation of energy
20 efficiency improvements and renewable energy systems through the creation
21 of clean energy assessment districts. Such public purposes include, but
22 are not limited to, reduced energy and water costs, reduced greenhouse
23 gas emissions, economic stimulation and development, improved property
24 valuation, and increased employment.

25 Sec. 2. Section 13-3203, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 13-3203 For purposes of the Property Assessed Clean Energy Act:

28 (1) Assessment contract means a contract entered into between a
29 municipality, a property owner, and, if applicable, a third-party lender
30 under which the municipality agrees to provide financing for an energy
31 project in exchange for a property owner's agreement to pay an annual

1 assessment for a period not to exceed the weighted average useful life of
2 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 demand or consumption of the buildings on or to be constructed on
9 such property or to promote the efficient and effective management of
10 natural resources or storm water, 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, including, but not limited to,
24 cogeneration and trigeneration systems;

25 (h) Daylighting systems;

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

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

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

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

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

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

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

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

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

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

21 (a) Agricultural property;

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

24 (c) Industrial property; or

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

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

31 (i) Nonhazardous biomass;

- 1 (ii) Solar and solar thermal energy;
- 2 (iii) Wind energy;
- 3 (iv) Geothermal energy;
- 4 (v) Methane gas captured from a landfill or elsewhere; and
- 5 (vi) Photovoltaic systems; and
- 6 ~~(vii) Cogeneration and trigeneration systems; and~~

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

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

14 Sec. 3. Section 13-3204, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 13-3204 (1) Pursuant to the procedures provided in this section, a
17 municipality may, from time to time, create one or more clean energy
18 assessment districts. Such districts may be separate, overlapping, or
19 coterminous and may be created anywhere within the municipality or its
20 extraterritorial zoning jurisdiction, except that a county shall not
21 create a district that includes any area within the corporate boundaries
22 or extraterritorial zoning jurisdiction of any city or village located in
23 whole or in part within such county. The governing body of the
24 municipality shall be the governing body for any district so created.

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

30 (3) After the public hearing, the municipality may create a clean
31 energy assessment district by ordinance or, for counties, by resolution.

1 The ordinance or resolution shall include:

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

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

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

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

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

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

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

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

22 (i) Provisions for an adequate debt service reserve fund created
23 under section 13-3209, if applicable;

24 (ii) Provisions for an adequate loss reserve fund created under
25 section 13-3208; and

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

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

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

6 (k) A requirement that, prior to the effective date of any contract
7 that binds the purchaser to purchase qualifying property upon which an
8 annual assessment is imposed, the owner shall provide notice to the
9 purchaser that the purchaser assumes responsibility for payment of the
10 annual assessment as provided in subdivision (3)(d) of section 13-3205;

11 (l) Provisions for marketing and participant education;

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

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

22 Sec. 4. Section 13-3205, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

24 13-3205 (1) After passage of an ordinance or resolution under
25 section 13-3204, a municipality may enter into an assessment contract
26 with the record owner of qualifying property within a clean energy
27 assessment district and, if applicable, with a third-party lender to
28 finance an energy project on the qualifying property. The costs financed
29 under the assessment contract may include the cost of materials and labor
30 necessary for installation, permit fees, inspection fees, application and
31 administrative fees, bank fees, and all other fees ~~that may be~~ incurred

1 by the owner pursuant to the installation. The assessment contract shall
2 provide for the repayment of all such costs through annual assessments
3 upon the qualifying property benefited by the energy project. A
4 municipality may not impose an annual assessment under the Property
5 Assessed Clean Energy Act unless such annual assessment is part of an
6 assessment contract entered into under this section.

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

10 (a) In all cases involving qualifying property other than single-
11 family residential property, that the owner has obtained an acknowledged
12 and verified written consent and subordination agreement executed by each
13 mortgage holder or trust deed beneficiary stating that the mortgagee or
14 beneficiary consents to the imposition of the annual assessment and that
15 the priority of the mortgage or trust deed is subordinated to the PACE
16 lien established in section 13-3206. The consent and subordination
17 agreement shall be in a form and substance acceptable to each mortgagee
18 or beneficiary and shall be recorded in the office of the register of
19 deeds of the county in which the qualifying property is located;

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

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

29 (d) That there are sufficient resources to complete the energy
30 project and that the energy project creates an estimated economic
31 benefit, including, but not limited to, energy and water cost savings,

1 maintenance cost savings, and other property operating savings expected
2 ~~from the energy project~~ during the financing period, which is equal to or
3 greater than the principal cost of the energy project. The estimated
4 economic benefit may be derived from federal, state, or third-party
5 engineer certifications or from standards of energy or water savings
6 associated with a particular energy efficiency improvement or set of
7 energy efficiency improvements. A municipality may waive the requirements
8 of this subdivision upon request of the owner of the qualifying property,
9 and, if such request is denied, the owner may appeal the denial as
10 provided by the ordinance or resolution adopted pursuant to section
11 13-3204 or as otherwise provided by local ordinance or resolution.

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

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

19 (b) A mechanism for:

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

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

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

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

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

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

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

17 (6) The municipality shall provide a copy of each signed assessment
18 contract to the county assessor and register of deeds of the county in
19 which the qualifying property is located, and the register of deeds shall
20 record the assessment contract with the qualifying property.

21 (7) Annual assessments agreed to under an assessment contract shall
22 be levied against the qualifying property and collected at the same time
23 and in the same manner as property taxes are levied and collected, except
24 that an assessment contract for qualifying property other than single-
25 family residential property may allow third-party lenders to collect
26 annual assessments directly from the owner of the qualifying property in
27 a manner prescribed in the assessment contract. Any third-party lender
28 collecting annual assessments directly from the owner of the qualifying
29 property shall notify the municipality within three business days if an
30 annual assessment becomes delinquent.

31 (8) Collection of annual assessments shall only be sought from the

1 original owners or subsequent purchasers of qualifying property subject
2 to an assessment contract.

3 Sec. 5. Original sections 13-3202, 13-3203, 13-3204, and 13-3205,
4 Revised Statutes Cumulative Supplement, 2018, are repealed.

5 Sec. 6. Since an emergency exists, this act takes effect when
6 passed and approved according to law.