

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.