

AMENDMENTS TO LB23

Introduced by Urban Affairs.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 13-3202, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 13-3202 The Legislature finds that:

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

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

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

20 (4) Public purposes A ~~public purpose~~ will be served by providing
21 municipalities with the authority to finance the installation of energy
22 efficiency improvements and renewable energy systems through the creation
23 of clean energy assessment districts. Such public purposes include, but
24 are not limited to, reduced energy and water costs, reduced greenhouse
25 gas emissions, economic stimulation and development, improved property
26 valuation, and increased employment.

27 Sec. 2. Section 13-3203, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 13-3203 For purposes of the Property Assessed Clean Energy Act:

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

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

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

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

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

23 (c) Automated energy control systems;

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

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

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

29 (g) Energy recovery systems, including, but not limited to,
30 cogeneration and trigeneration systems;

31 (h) Daylighting systems;

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

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

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

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

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

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

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

21 (5) Energy project means the installation or modification of an
22 energy efficiency improvement or the acquisition, installation, or
23 improvement of a renewable energy system;

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

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

27 (a) Agricultural property;

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

30 (c) Industrial property; or

31 (d) Single-family residential property, which may include up to four

1 dwelling units;

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

6 (i) Nonhazardous biomass;

7 (ii) Solar and solar thermal energy;

8 (iii) Wind energy;

9 (iv) Geothermal energy;

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

11 (vi) Photovoltaic systems; and

12 ~~(vii) Cogeneration and trigeneration systems; and~~

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

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

20 Sec. 3. Section 13-3204, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

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

31 (2) Prior to creating any clean energy assessment district, the

1 municipality shall hold a public hearing at which the public may comment
2 on the creation of such district. Notice of the public hearing shall be
3 given by publication in a legal newspaper in or of general circulation in
4 the municipality at least ten days prior to the hearing.

5 (3) After the public hearing, the municipality may create a clean
6 energy assessment district by ordinance or, for counties, by resolution.
7 The ordinance or resolution shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (l) Provisions for marketing and participant education;

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

28 Sec. 4. Section 13-3205, Revised Statutes Cumulative Supplement,
29 2018, is amended to read:

30 13-3205 (1) After passage of an ordinance or resolution under
31 section 13-3204, a municipality may enter into an assessment contract

1 with the record owner of qualifying property within a clean energy
2 assessment district and, if applicable, with a third-party lender to
3 finance an energy project on the qualifying property. The costs financed
4 under the assessment contract may include the cost of materials and labor
5 necessary for 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 assessment contract shall
8 provide for the repayment of all such costs through annual assessments
9 upon the qualifying property benefited by the energy project. A
10 municipality may not impose an annual assessment under the Property
11 Assessed Clean Energy Act unless such annual assessment is part of an
12 assessment contract entered into under this section.

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

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

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

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

4 (d) That there are sufficient resources to complete the energy
5 project and that the energy project creates an estimated economic
6 benefit, including, but not limited to, energy and water cost savings,
7 maintenance cost savings, and other property operating savings expected
8 from the energy project during the financing period, which is equal to or
9 greater than the principal cost of the energy project. The estimated
10 economic benefit may be derived from federal, state, or third-party
11 engineer certifications or from standards of energy or water savings
12 associated with a particular energy efficiency improvement or set of
13 energy efficiency improvements. A municipality may waive the requirements
14 of this subdivision upon request of the owner of the qualifying property,
15 and, if such request is denied, the owner may appeal the denial as
16 provided by the ordinance or resolution adopted pursuant to section
17 13-3204 or as otherwise provided by local ordinance or resolution.

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

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

25 (b) A mechanism for:

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

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

31 (c) An agreement by the property owner to pay annual assessments for

1 a period not to exceed the weighted average useful life of the energy
2 project;

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

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

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

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

23 (6) The municipality shall provide a copy of each signed assessment
24 contract to the county assessor and register of deeds of the county in
25 which the qualifying property is located, and the register of deeds shall
26 record the assessment contract with the qualifying property.

27 (7) Annual assessments agreed to under an assessment contract shall
28 be levied against the qualifying property and collected at the same time
29 and in the same manner as property taxes are levied and collected, except
30 that an assessment contract for qualifying property other than single-
31 family residential property may allow third-party lenders to collect

1 annual assessments directly from the owner of the qualifying property in
2 a manner prescribed in the assessment contract. Any third-party lender
3 collecting annual assessments directly from the owner of the qualifying
4 property shall notify the municipality within three business days if an
5 annual assessment becomes delinquent.

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

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

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