

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 23

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 and as an economic development
12 initiative, the state should promote energy efficiency improvements and
13 renewable energy systems;

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

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

23 Sec. 2. Section 13-3203, Revised Statutes Cumulative Supplement,
24 2018, is amended to read:

25 13-3203 For purposes of the Property Assessed Clean Energy Act:

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

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

3 (3) Energy efficiency improvement means any acquisition,
4 installation, or modification benefiting publicly or privately owned
5 property that is designed to reduce the electric, gas, water, or other
6 utility demand or consumption of the buildings on or to be constructed on
7 such property or to promote the efficient and effective management of
8 natural resources or storm water. Such acquisition, installation, or
9 modification may be planned or already in place. If already in place, the
10 remaining weighted average useful life of such acquisition, installation,
11 or modification must be at least ten years at the time the application
12 for financing is submitted to the municipality. Energy efficiency
13 improvement includes, but is ~~including~~, but not limited to:

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

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

20 (c) Automated energy control systems;

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

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

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

26 (g) Energy recovery systems;

27 (h) Daylighting systems;

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

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

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

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

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

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

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

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

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

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

23 (a) Agricultural property;

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

26 (c) Industrial property; or

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

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

1 limited to, the following:

2 (i) Nonhazardous biomass;

3 (ii) Solar and solar thermal energy;

4 (iii) Wind energy;

5 (iv) Geothermal energy;

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

7 (vi) Photovoltaic systems; and

8 (vii) Cogeneration and trigeneration systems; and

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

11 (9) Renewable energy system means a fixture, product, device, or
12 interacting group of fixtures, products, or devices on the customer's
13 side of the meter that uses one or more renewable energy resources to
14 generate electricity. Such fixture, product, device, or interacting group
15 may be planned or already in place. If already in place, the remaining
16 weighted average useful life of such fixture, product, device, or
17 interacting group must be at least ten years at the time the application
18 for financing is submitted to the municipality. Renewable energy system
19 includes a biomass stove 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 or remaining weighted average useful
6 life of the energy project paid for by the 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, 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.

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

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

21 (b) A mechanism for:

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

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

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

30 (d) A statement that the obligations set forth in the assessment
31 contract, including the obligation to pay annual assessments, are a

1 covenant that shall run with the land and be obligations upon future
2 owners of the qualifying property; and

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

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

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

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

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

1 annual assessment becomes delinquent.

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

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

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