

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 228**

Introduced by Morfeld, 46.

Read first time January 11, 2021

Committee: Urban Affairs

1 A BILL FOR AN ACT relating to the Property Assessed Clean Energy Act; to  
2 amend sections 13-3203, 13-3204, and 13-3205, Revised Statutes  
3 Cumulative Supplement, 2020; to redefine a term; to change  
4 provisions relating to requirements for ordinances and resolutions  
5 and assessment contract provisions; to harmonize provisions; to  
6 repeal the original sections; and to declare an emergency.  
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-3203, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 13-3203 For purposes of the Property Assessed Clean Energy Act:

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

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

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

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

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

24 (c) Automated energy control systems;

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

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

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

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

1 (h) Daylighting systems;

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

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

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

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

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

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

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

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

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

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

28 (a) Agricultural property;

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

31 (c) Industrial property; or

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

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

7 (i) Nonhazardous biomass;

8 (ii) Solar and solar thermal energy;

9 (iii) Wind energy;

10 (iv) Geothermal energy;

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

12 (vi) Photovoltaic 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. 2. Section 13-3204, Revised Statutes Cumulative Supplement,  
21 2020, 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) Provisions allowing the financing to be used to reimburse or  
19 refinance the costs of an energy project, except that such use of  
20 financing shall be subject to any other limitations in the Property  
21 Assessed Clean Energy Act;

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

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

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

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

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

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

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

8 (j) ~~(i)~~ A requirement that the term of the annual assessments not  
9 exceed the weighted average useful life or remaining weighted average  
10 useful life of the energy project paid for by the annual assessments;

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

16 (l) ~~(k)~~ A requirement that, prior to the effective date of any  
17 contract that binds the purchaser to purchase qualifying property upon  
18 which an annual assessment is imposed, the owner shall provide notice to  
19 the purchaser that the purchaser assumes responsibility for payment of  
20 the annual assessment as provided in subdivision (3)(d) of section  
21 13-3205;

22 (m) ~~(l)~~ Provisions for marketing and participant education;

23 (n) ~~(m)~~ A requirement that the municipality obtain verification that  
24 the renewable energy system or energy efficiency improvement was properly  
25 installed and is operating as intended; and

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

1           Sec. 3. Section 13-3205, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3           13-3205 (1) After passage of an ordinance or resolution under  
4 section 13-3204, a municipality may enter into an assessment contract  
5 with the record owner of qualifying property within a clean energy  
6 assessment district and, if applicable, with a third-party lender to  
7 finance an energy project on the qualifying property. The costs financed  
8 under the assessment contract may include the cost of materials and labor  
9 necessary for installation, permit fees, inspection fees, application and  
10 administrative fees, bank fees, and all other fees incurred by the owner  
11 pursuant to the installation. The assessment contract shall provide for  
12 the repayment of all such costs through annual assessments upon the  
13 qualifying property benefited by the energy project. A municipality may  
14 not impose an annual assessment under the Property Assessed Clean Energy  
15 Act unless such annual assessment is part of an assessment contract  
16 entered into under this section.

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

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

30           (b) That there are no delinquent taxes, special assessments, water  
31 or sewer charges, or any other assessments levied on the qualifying

1 property; that there are no involuntary liens, including, but not limited  
2 to, construction liens, on the qualifying property; and that the owner of  
3 the qualifying property is current on all debt secured by a mortgage or  
4 trust deed encumbering or otherwise securing the qualifying property;

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

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

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

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

29 (b) A mechanism for:

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



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

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

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

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

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

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

27 (6) The municipality shall provide a copy of each signed assessment  
28 contract to the county assessor and register of deeds of the county in  
29 which the qualifying property is located, and the register of deeds shall  
30 record the assessment contract with the qualifying property.

31 (7) Annual assessments agreed to under an assessment contract shall

1 be levied against the qualifying property and collected at the same time  
2 and in the same manner as property taxes are levied and collected, except  
3 that an assessment contract for qualifying property other than single-  
4 family residential property may allow third-party lenders to collect  
5 annual assessments directly from the owner of the qualifying property in  
6 a manner prescribed in the assessment contract. Any third-party lender  
7 collecting annual assessments directly from the owner of the qualifying  
8 property shall notify the municipality within three business days if an  
9 annual assessment becomes delinquent.

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

13 Sec. 4. Original sections 13-3203, 13-3204, and 13-3205, Revised  
14 Statutes Cumulative Supplement, 2020, are repealed.

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