

AMENDMENTS TO LB1012

(Amendments to Standing Committee amendments, AM2253)

Introduced by Mello, 5.

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

3 Section 1. Sections 1 to 11 of this act shall be known and may be
4 cited as the Property Assessed Clean Energy Act.

5 Sec. 2. 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 new jobs will be created for Nebraskans in the energy efficiency and
12 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) A public purpose will be served by providing municipalities with
21 the authority to finance the installation of energy efficiency
22 improvements and renewable energy systems through the creation of clean
23 energy assessment districts.

24 Sec. 3. For purposes of the Property Assessed Clean Energy Act:

25 (1) Assessment contract means a contract entered into between a
26 municipality, a property owner, and, if applicable, a third-party lender

1 under which the municipality agrees to provide financing for an energy
2 project in exchange for a property owner's agreement to pay an annual
3 assessment for a period not to exceed the weighted average useful life of
4 the energy project;

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

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

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

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

19 (c) Automated energy control systems;

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

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

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

25 (g) Energy recovery systems;

26 (h) Daylighting systems;

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

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

31 (k) Roofs designed to reduce energy consumption or support

1 additional loads necessitated by other energy efficiency improvements;

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

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

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

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

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

19 (6) Municipality means any city or village in this state;

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

22 (a) Commercial property, including multi-family residential property
23 comprised of more than four dwelling units;

24 (b) Industrial property; or

25 (c) 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;
- 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. 4. (1) Pursuant to the procedures provided in this section, a
15 municipality may, from time to time, create one or more clean energy
16 assessment districts. Such districts may be separate, overlapping, or
17 coterminous. The governing body of the municipality shall be the
18 governing body for any district so created.

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

24 (3) After the public hearing, the municipality may create a clean
25 energy assessment district by ordinance. The ordinance shall include:

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

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

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

3 (d) An application process and eligibility requirements for
4 financing energy projects;

5 (e) An explanation of how annual assessments will be made and
6 collected;

7 (f) For energy projects involving residential property, a
8 requirement that any interest rate on assessment installments must be a
9 fixed rate;

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

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

15 (i) Provisions for an adequate debt service reserve fund created
16 under section 9 of this act, if applicable;

17 (ii) Provisions for an adequate loss reserve fund created under
18 section 8 of this act; and

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

22 (i) A requirement that the term of the annual assessments not exceed
23 the weighted average useful life of the energy project paid for by the
24 annual assessments;

25 (j) A requirement that any energy efficiency improvement that is not
26 permanently affixed to the qualifying property upon which an annual
27 assessment is imposed to repay the cost of such energy efficiency
28 improvement must be conveyed with the qualifying property if a transfer
29 of ownership of the qualifying property occurs;

30 (k) A requirement that, prior to the effective date of any contract
31 that binds the purchaser to purchase qualifying property upon which an

1 annual assessment is imposed, the owner shall provide notice to the
2 purchaser that the purchaser assumes responsibility for payment of the
3 annual assessment as provided in subdivision (3)(d) of section 5 of this
4 act;

5 (l) Provisions for marketing and participant education;

6 (m) A requirement that after the energy project is completed, the
7 municipality shall obtain verification that the renewable energy system
8 or energy efficiency improvement was properly installed and is operating
9 as intended;

10 (n) For an energy project financed with more than two hundred fifty
11 thousand dollars in annual assessments, a requirement for ongoing
12 measurements that establish the savings realized by the record owner of
13 the qualifying property from the energy project; and

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

20 Sec. 5. (1) After passage of an ordinance under section 4 of this
21 act, a municipality may enter into an assessment contract with the record
22 owner of qualifying property within a clean energy assessment district
23 and, if applicable, with a third-party lender to finance an energy
24 project on the qualifying property. The costs financed under the
25 assessment contract may include the cost of materials and labor necessary
26 for installation, permit fees, inspection fees, application and
27 administrative fees, bank fees, and all other fees that may be incurred
28 by the owner pursuant to the installation. The assessment contract shall
29 provide for the repayment of all such costs through annual assessments
30 upon the qualifying property benefited by the energy project. A
31 municipality may not impose an annual assessment under the Property

1 Assessed Clean Energy Act unless such annual assessment is part of an
2 assessment contract entered into under this section.

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

6 (a) In all cases involving qualifying property other than single-
7 family residential property, that the owner has obtained an acknowledged
8 and verified written consent and subordination agreement executed by each
9 mortgage holder or trust deed beneficiary stating that the mortgagee or
10 beneficiary consents to the imposition of the annual assessment and that
11 the priority of the mortgage or trust deed is subordinated to the PACE
12 lien established in section 6 of this act. The consent and subordination
13 agreement shall be in a form and substance acceptable to each mortgagee
14 or beneficiary and shall be recorded in the office of the register of
15 deeds of the county in which the qualifying property is located;

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

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

25 (d) That there are sufficient resources to complete the energy
26 project and that the estimated economic benefit, including, but not
27 limited to, energy cost savings, maintenance cost savings, and other
28 property operating savings expected from the energy project during the
29 financing period, is equal to or greater than the principal cost of the
30 energy project.

31 (3) Upon completion of the verifications required under subsection

1 (2) of this section, an assessment contract may be executed by the
2 municipality, the owner of the qualifying property, and, if applicable, a
3 third-party lender and shall provide:

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

7 (b) A mechanism for:

8 (i) Verifying the final costs of the energy project upon its
9 completion; and

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

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

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

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

25 (4) The total annual assessments levied against qualifying property
26 under an assessment contract shall not exceed the sum of the cost of the
27 energy project, including any energy audits or inspections or portion
28 thereof financed by the municipality, plus such administration fees,
29 interest, and other financing costs reasonably required by the
30 municipality.

31 (5) Nothing in the Property Assessed Clean Energy Act shall be

1 construed to prevent a municipality from entering into more than one
2 assessment contract with respect to a single parcel of real property so
3 long as each assessment contract relates to a separate energy project and
4 subdivision (2)(c) of this section is not violated.

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

9 (7) Annual assessments agreed to under an assessment contract shall
10 be levied against the qualifying property and collected at the same time
11 and in the same manner as property taxes are levied and collected.

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

15 Sec. 6. (1)(a) For qualifying property other than single-family
16 residential property, any annual assessment imposed on such qualifying
17 property that becomes delinquent, including any interest on the annual
18 assessment and any penalty, shall constitute a PACE lien against the
19 qualifying property on which the annual assessment is imposed until the
20 annual assessment, including any interest and penalty, is paid in full.
21 Any annual assessment that is not paid within the time period set forth
22 in the assessment contract shall be considered delinquent. The
23 municipality shall, within fourteen days after an annual assessment
24 becomes delinquent, record a notice of such lien in the office of the
25 register of deeds of the county in which the qualifying property is
26 located.

27 (b) For qualifying property that is single-family residential
28 property, all annual assessments imposed on such qualifying property,
29 including any interest on the annual assessments and any penalty, shall,
30 upon the initial annual assessment, constitute a PACE lien against the
31 qualifying property on which the annual assessments are imposed until all

1 annual assessments, including any interest and penalty, are paid in full.
2 Any annual assessment that is not paid within the time period set forth
3 in the assessment contract shall be considered delinquent. The
4 municipality shall, upon imposition of the initial annual assessment,
5 record a notice of such lien in the office of the register of deeds of
6 the county in which the qualifying property is located.

7 (2) A notice of lien filed under this section shall, at a minimum,
8 include:

9 (a) The amount of funds disbursed or to be disbursed pursuant to the
10 assessment contract;

11 (b) The names and addresses of the current owners of the qualifying
12 property subject to the annual assessment;

13 (c) The legal description of the qualifying property subject to the
14 annual assessment;

15 (d) The duration of the assessment contract; and

16 (e) The name and address of the municipality filing the notice of
17 lien.

18 (3) The PACE lien created under this section shall:

19 (a) For qualifying property that is single-family residential
20 property, (i) be subordinate to all liens on the qualifying property
21 recorded prior to the time the notice of the PACE lien is recorded, (ii)
22 be subordinate to a first mortgage or trust deed on the qualifying
23 property recorded after the notice of the PACE lien is recorded, and
24 (iii) have priority over any other lien on the qualifying property
25 recorded after the notice of the PACE lien is recorded; and

26 (b) For qualifying property other than single-family residential
27 property and subject to the requirement in subdivision (2)(a) of section
28 5 of this act to obtain and record an executed consent and subordination
29 agreement, have the same priority and status as real property tax liens.

30 (4)(a) Notwithstanding any other provision of law, in the event of a
31 sale pursuant to a foreclosure or a sale pursuant to the exercise of a

1 power of sale under a trust deed relating to qualifying property that is
2 single-family residential property, the holders of any mortgages, trust
3 deeds, or other liens, including delinquent annual assessments secured by
4 PACE liens, shall receive proceeds in accordance with the priorities
5 established under subdivision (3)(a) of this section. In the event there
6 are insufficient proceeds from such a sale, from the loss reserve fund
7 established pursuant to section 8 of this act, or from any other means to
8 satisfy the delinquent annual assessments, such delinquent annual
9 assessments shall be extinguished. Any annual assessment that has not yet
10 become delinquent shall not be accelerated or extinguished in the event
11 of a sale pursuant to a foreclosure or a sale pursuant to the exercise of
12 a power of sale under a trust deed relating to qualifying property that
13 is single-family residential property. Upon the transfer of ownership of
14 qualifying property that is single-family residential property, including
15 a sale pursuant to a foreclosure or a sale pursuant to the exercise of a
16 power of sale under a trust deed, the non-delinquent annual assessments
17 shall continue as a lien on the qualifying property, subject to the
18 priorities established under subdivision (3)(a) of this section.

19 (b) Upon the transfer of ownership of qualifying property other than
20 single-family residential property, including a sale pursuant to a
21 foreclosure or a sale pursuant to the exercise of a power of sale under a
22 trust deed, the obligation to pay annual assessments shall run with the
23 qualifying property.

24 (5)(a) For qualifying property other than single-family residential
25 property, when the delinquent annual assessment, including any interest
26 and penalty, is paid in full, a release of the PACE lien shall be
27 recorded in the office of the register of deeds of the county in which
28 the notice of the PACE lien was recorded.

29 (b) For qualifying property that is single-family residential
30 property, when all annual assessments, including any interest and
31 penalty, are paid in full, a release of the PACE lien shall be recorded

1 in the office of the register of deeds of the county in which the notice
2 of the PACE lien was recorded.

3 (6) If the holder or loan servicer of any existing mortgage or trust
4 deed that encumbers or that is otherwise secured by the qualifying
5 property has established a payment schedule or escrow account to accrue
6 property taxes or insurance, such holder or loan servicer may increase
7 the required monthly payment, if any, by an amount necessary to pay the
8 annual assessment imposed under the Property Assessed Clean Energy Act.

9 Sec. 7. (1) A municipality may raise capital to finance energy
10 projects undertaken pursuant to an assessment contract entered into under
11 the Property Assessed Clean Energy Act. Such capital may come from any of
12 the following:

13 (a) The sale of bonds;

14 (b) Amounts to be advanced by the municipality through funds
15 available to it from any other source; or

16 (c) Third-party lending.

17 (2) Bonds issued under subsection (1) of this section shall not be
18 general obligations of the municipality, shall be nonrecourse, and shall
19 not be backed by the full faith and credit of the issuer, the
20 municipality, or the state, but shall only be secured by payments of
21 annual assessments by owners of qualifying property within the clean
22 energy assessment district or districts specified who are subject to an
23 assessment contract under section 5 of this act.

24 (3) Any single bond issuance by a municipality for purposes of the
25 Property Assessed Clean Energy Act shall not exceed five million dollars
26 without a vote of the registered voters of such municipality.

27 (4) A pledge of annual assessments, funds, or contractual rights
28 made in connection with the issuance of bonds by a municipality
29 constitutes a statutory lien on the annual assessments, funds, or
30 contractual rights so pledged in favor of the person or persons to whom
31 the pledge is given without further action by the municipality. The

1 statutory lien is valid and binding against all other persons, with or
2 without notice.

3 (5) Bonds of one series issued under the Property Assessed Clean
4 Energy Act may be secured on a parity with bonds of another series issued
5 by the municipality pursuant to the terms of a master indenture or master
6 resolution entered into or adopted by the municipality.

7 (6) Bonds issued under the act, and interest payable on such bonds,
8 are exempt from all taxation by this state and its political
9 subdivisions.

10 (7) Bonds issued under the act further essential public and
11 governmental purposes, including, but not limited to, reduced energy
12 costs, reduced greenhouse gas emissions, economic stimulation and
13 development, improved property valuation, and increased employment.

14 (8) The Property Assessed Clean Energy Act shall not be used to
15 finance an energy project on qualifying property owned by a municipality
16 or any other political subdivision of the State of Nebraska without
17 having first been approved by a vote of the registered voters of such
18 municipality or political subdivision owning the qualifying property.
19 Such vote shall be taken at a special election called for such purpose or
20 at an election held in conjunction with a statewide or local primary or
21 general election.

22 Sec. 8. (1) A municipality that has created a clean energy
23 assessment district shall create a loss reserve fund for:

24 (a) The payment of any delinquent annual assessments for qualifying
25 property that is single-family residential property in the event that
26 there is a sale pursuant to a foreclosure or a sale pursuant to the
27 exercise of a power of sale under a trust deed of such qualifying
28 property and the proceeds resulting from such a sale are, after all
29 superior liens have been satisfied, insufficient to pay the delinquent
30 annual assessments. Payments from the loss reserve fund under this
31 subdivision may only be made with respect to delinquent annual

1 assessments imposed upon qualifying property that is single-family
2 residential property, with no more than one such payment to be made for
3 the same qualifying property; and

4 (b) The payment of annual assessments imposed upon qualifying
5 property that is single-family residential property subsequent to a sale
6 pursuant to a foreclosure or a sale pursuant to the exercise of a power
7 of sale under a trust deed in which the mortgagee or beneficiary becomes
8 the owner of such qualifying property. Payments from the loss reserve
9 fund under this subdivision may only be made with respect to annual
10 assessments imposed upon qualifying property that is single-family
11 residential property subsequent to the date on which the mortgagee or
12 beneficiary became the owner of such qualifying property and until the
13 qualifying property is conveyed by the mortgagee or beneficiary, with no
14 more than one such payment to be made for the same qualifying property.

15 (2) The loss reserve fund may be funded by state and federal
16 sources, the proceeds of bonds issued pursuant to the Property Assessed
17 Clean Energy Act, third-party capital, and participating property owners.
18 The loss reserve fund shall only be used to provide payment of annual
19 assessments as provided in this section and for the costs of
20 administering the loss reserve fund.

21 (3) The loss reserve fund shall not be funded by, and payment of
22 annual assessments and costs of administering the loss reserve fund shall
23 not be made from, the general fund of any municipality.

24 Sec. 9. A municipality that has created a clean energy assessment
25 district may create a debt service reserve fund to be used as security
26 for capital raised under section 7 of this act.

27 Sec. 10. (1) Two or more municipalities may enter into an agreement
28 pursuant to the Interlocal Cooperation Act for the creation,
29 administration, or creation and administration of clean energy assessment
30 districts.

31 (2) If the creation of clean energy assessment districts is

1 implemented jointly by two or more municipalities, a single public
2 hearing held jointly by the cooperating municipalities is sufficient to
3 satisfy the requirements of section 4 of this act.

4 (3) A municipality or municipalities may contract with a third party
5 for the administration of clean energy assessment districts.

6 Sec. 11. Any municipality that creates a clean energy assessment
7 district under the Property Assessed Clean Energy Act shall, on or before
8 January 31 of each year, electronically submit a report to the Urban
9 Affairs Committee of the Legislature on the following:

10 (1) The number of clean energy assessment districts in the
11 municipality and their location;

12 (2) The total dollar amount of energy projects undertaken pursuant
13 to the act;

14 (3) The total dollar amount of outstanding bonds issued under the
15 act;

16 (4) The total dollar amount of annual assessments collected as of
17 the end of the most recently completed calendar year and the total amount
18 of annual assessments yet to be collected pursuant to assessment
19 contracts signed under the act; and

20 (5) A description of the types of energy projects undertaken
21 pursuant to the act.

22 Sec. 12. The Revisor of Statutes shall assign sections 1 to 11 of
23 this act to Chapter 18.