

HB2831



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB2831

by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

New Act

Creates the Property Assessed Clean Energy Act. Provides that a local unit of government may establish a property assessed clean energy program. Provides that, to finance or refinance one or more energy projects on the property covered by the program, a local unit of government may impose an assessment pursuant to the terms of an assessment contract with the record owner of the property to be assessed. Provides that a local unit of government may issue bonds to finance energy projects under a property assessed clean energy program. Contains other provisions. Effective immediately.

LRB100 06946 HLH 19794 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Property Assessed Clean Energy Act.

6 Section 5. Definitions. As used in this Act:

7 "Assessment contract" means a contract between the local
8 unit of government and record owner governing the terms and
9 conditions of financing and assessment under a program.

10 "District" means a district created by a local unit of
11 government under a property assessed clean energy program that
12 lies within the local unit of government's jurisdictional
13 boundaries. A local unit of government may create more than one
14 district under the program, and districts may be separate,
15 overlapping, or coterminous.

16 "Energy efficiency improvement" means equipment, devices,
17 or materials intended to decrease energy consumption or promote
18 a more efficient use of electricity, natural gas, propane, or
19 other forms of energy on property, including, but not limited
20 to, all of the following:

21 (1) insulation in walls, roofs, floors, foundations,
22 or heating and cooling distribution systems;

23 (2) storm windows and doors, multi-glazed windows and

1 doors, heat-absorbing or heat-reflective glazed and coated
2 window and door systems, and additional glazing,
3 reductions in glass area, and other window and door system
4 modifications that reduce energy consumption;

5 (3) automated energy control systems;

6 (4) energy efficient heating, ventilating, or
7 air-conditioning and distribution system modifications or
8 replacements;

9 (5) caulking, weather-stripping, and air sealing;

10 (6) replacement or modification of lighting fixtures
11 to reduce the energy use of the lighting system;

12 (7) energy controls or recovery systems;

13 (8) day lighting systems;

14 (9) installation or upgrade of electrical wiring or
15 outlets to charge a motor vehicle that is fully or
16 partially powered by electricity;

17 (10) measures to reduce the usage of water or increases
18 the efficiency of water usage;

19 (11) any other installation or modification of
20 equipment, devices, or materials approved as a utility
21 cost-savings measure by the governing body;

22 (12) wind resistance improvements including, but not
23 limited to:

24 (A) improving the strength of the roof deck
25 attachment;

26 (B) creating a secondary water barrier to prevent

1 water intrusion;

2 (C) installing wind-resistant shingles;

3 (D) installing gable-end bracing;

4 (E) reinforcing roof-to-wall connections;

5 (F) installing storm shutters; or

6 (G) installing opening protections.

7 "Energy project" means the installation or modification of
8 an energy efficiency improvement or the acquisition,
9 installation, or improvement of a renewable energy system that
10 is affixed to a stabilized existing property (not new
11 construction).

12 "Governing body" means the county board or board of county
13 commissioners of a county, the board of trustees of a township,
14 the city council of a city, or the board of trustees of a
15 village.

16 "Local unit of government" means a county or municipality.

17 "Person" means an individual, firm, partnership,
18 association, corporation, unincorporated joint venture, or
19 trust. "Person" does not include a local unit of government or
20 a homeowner's or condominium association.

21 "Program administrator" means a for-profit entity or
22 not-for profit entity that will administer a program on behalf
23 of or at the discretion of the local unit of government. It or
24 its affiliates shall have done business in Illinois for a
25 minimum of 5 years and shall be responsible for providing
26 capital for the acquisition of bonds issued by the local unit

1 of government to finance energy projects.

2 "Property" means privately-owned commercial, industrial,
3 vacant and multi-family (of 4 or more units) real property
4 located within the local unit of government.

5 "Property assessed clean energy program" or "program"
6 means a program as described in Section 10.

7 "Record owner" means the titleholder or owner of the
8 beneficial interest.

9 "Renewable energy resource" means a resource that
10 naturally replenishes over a human, not a geological, time
11 frame and that is ultimately derived from solar power, water
12 power, or wind power. The term "renewable energy resource" does
13 not include petroleum, nuclear, natural gas, or coal. A
14 Renewable Energy Resource comes from the sun or from thermal
15 inertia of the earth and minimizes the output of toxic material
16 in the conversion of the energy, and includes, but is not
17 limited to, all of the following:

- 18 (1) biomass or bioenergy;
- 19 (2) solar and solar thermal energy;
- 20 (3) wind energy;
- 21 (4) geothermal energy;
- 22 (5) methane gas captured from a landfill; and
- 23 (6) hydrogen

24 "Renewable energy system" means a fixture, product,
25 device, or interacting group of fixtures, products, or devices
26 on the customer's side of the meter that use one or more

1 renewable energy resources to generate electricity. Renewable
2 energy system includes a biomass stove but does not include an
3 incinerator or digester.

4 Section 10. Property assessed clean energy program;
5 creation.

6 (a) Pursuant to the procedures provided in Section 15, a
7 local unit of government may establish a property assessed
8 clean energy program and may, from time to time, create a
9 district or districts under the program.

10 (b) Under a program, the local unit of government may enter
11 into an assessment contract with the record owner of property
12 within a district to finance or refinance one or more energy
13 projects on the property. The assessment contract shall provide
14 for the repayment of the cost of an energy project through
15 assessments upon the property benefited. The financing or
16 refinancing may include any and all of the following: the cost
17 of materials and labor necessary for installation, permit fees,
18 inspection fees, application and administrative fees, bank
19 fees, and all other fees that may be incurred by the record
20 owner pursuant to the installation and the issuance of bonds on
21 a specific or pro rata basis, as determined by the local unit
22 of government and may also include a prepayment premium.

23 (c) A program may be administered by a program
24 administrator or the local unit of government.

1 Section 15. Program established.

2 (a) To establish a property assessed clean energy program,
3 the governing body of a local unit of government shall take the
4 following actions:

5 (1) adopt a resolution or ordinance of intent that
6 includes all of the following:

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

9 (B) a statement of intent to facilitate access to
10 capital from a program administrator to provide funds
11 for energy projects, which will be repaid by
12 assessments on the property benefited with the
13 agreement of the record owners;

14 (C) a description of the proposed arrangements for
15 financing the program through a program administrator;

16 (D) the types of energy projects that may be
17 financed;

18 (E) reference to a report on the proposed program
19 as described in Section 20; and

20 (F) the time and place for any public hearing
21 required for the adoption of the proposed program by
22 resolution or ordinance;

23 (2) adopt a resolution or ordinance establishing the
24 program and setting forth its terms and conditions,
25 including all of the following:

26 (A) matters required by Section 20 to be included

1 in the report; for this purpose, the resolution or
2 ordinance may incorporate the report or an amended
3 version thereof by reference; and

4 (B) a description of which aspects of the program
5 may be amended without a new public hearing and which
6 aspects may be amended only after a new public hearing
7 is held.

8 (b) A property assessed clean energy program may be amended
9 by resolution or ordinance of the governing body. Adoption of
10 the resolution or ordinance shall be preceded by a public
11 hearing if required pursuant to paragraph (3) of subsection (a)
12 of this Section.

13 Section 20. Report. The report on the proposed program
14 required under Section 15 shall include all of the following:

15 (1) a form of assessment contract between the local
16 unit of government and record owner governing the terms and
17 conditions of financing and assessment under the program.

18 (2) identification of an official authorized to enter
19 into a assessment contract on behalf of the local unit of
20 government;

21 (3) a maximum aggregate annual dollar amount for all
22 financing to be provided by the program administrator under
23 the program;

24 (4) an application process and eligibility
25 requirements for financing energy projects under the

1 program;

2 (5) a method for determining interest rates on
3 assessment installments, repayment periods, and the
4 maximum amount of an assessment;

5 (6) an explanation of how assessments will be made and
6 collected;

7 (7) a plan to raise capital to finance improvements
8 under the program pursuant to the sale of bonds, subject to
9 the Special Assessment Supplemental Bond and Procedures
10 Act, from a program administrator;

11 (8) information regarding all of the following, to the
12 extent known, or procedures to determine the following in
13 the future:

14 (A) any revenue source or reserve fund or funds to
15 be used as security for bonds described in paragraph
16 (7); and

17 (B) any application, administration, or other
18 program fees to be charged to record owners
19 participating in the program that will be used to
20 finance costs incurred by the local unit of government
21 as a result of the program;

22 (9) a requirement that the term of an assessment not
23 exceed the useful life of the energy project paid for by
24 the assessment; provided that projects that consist of
25 multiple improvements with varying lengths of useful life
26 shall have the lengths blended to determine an overall term

1 that does not exceed the useful life of the improvements in
2 aggregate;

3 (10) a requirement for an appropriate ratio of the
4 amount of the assessment to the assessed value of the
5 property or market value of the property as determined by a
6 recent appraisal no older than 12 months;

7 (11) a requirement that the record owner of property
8 subject to a mortgage obtain written consent from the
9 mortgage holder before participating in the program;

10 (12) provisions for marketing and participant
11 education;

12 (13) provisions for an adequate debt service reserve
13 fund, if any; and

14 (14) quality assurance and antifraud measures.

15 Section 25. Contracts with record owners of property.

16 (a) A local unit of government may impose an assessment
17 under a property assessed clean energy program only pursuant to
18 the terms of a recorded assessment contract with the record
19 owner of the property to be assessed.

20 (b) Before entering into an assessment contract with a
21 record owner under a program, the local unit of government
22 shall verify all of the following:

23 (1) that there are no delinquent taxes, special
24 assessments, or water or sewer charges on the property;

25 (2) that there are no delinquent assessments on the

1 property under a property assessed clean energy program;

2 (3) there are no involuntary liens on the property,
3 including, but not limited to, construction or mechanics
4 liens, lis pendens or judgments against the record owner,
5 environmental proceedings, or eminent domain proceedings;

6 (4) that no notices of default or other evidence of
7 property-based debt delinquency have been recorded and not
8 cured;

9 (5) that the record owner is current on all mortgage
10 debt on the property, the record owner has not filed for
11 bankruptcy in the last 2 years, and the property is not an
12 asset to a current bankruptcy.

13 (6) all work requiring a license under any applicable
14 law to make a qualifying improvement shall be performed by
15 a registered contractor that has agreed to adhere to a set
16 of terms and conditions through a process established by
17 the local unit of government.

18 (7) at the option of the local unit of government, the
19 contractors to be used have signed a written
20 acknowledgement that the local unit of government will not
21 authorize final payment to the contractor until the local
22 unit of government has received written confirmation from
23 the record owner that the improvement was properly
24 installed and is operating as intended;

25 (8) that the amount of tax in relation to the greater
26 of the assessed value of the property or the appraised

1 value of the property, as determined by a licensed
2 appraiser, does not exceed 25%; and

3 (9) a requirement that an assessment of the existing
4 water or energy use and a modeling of expected monetary
5 savings have been conducted for any proposed project.

6 (c) At least 30 days before entering into an agreement with
7 the local unit of government, the record owner shall provide to
8 the holders or loan servicers of any existing mortgages
9 encumbering or otherwise secured by the property a notice of
10 the record owner's intent to enter into an assessment contract
11 with the local unit of government, together with the maximum
12 principal amount to be financed and the maximum annual
13 assessment necessary to repay that amount, along with a request
14 that the holders or loan servicers of any existing mortgages
15 consent to the record owner subjecting the property to the
16 program. A verified copy or other proof of those notices and
17 the written consent of the existing mortgage holder for the
18 record owner to enter into the assessment contract and
19 acknowledging that the existing mortgage will be subordinate to
20 the financing and assessment agreement and that the local unit
21 of government can foreclose the property if the assessment is
22 not paid shall be provided to the local unit of government. A
23 provision in any agreement between a mortgagee or other
24 lienholder and a record owner, or any other provision that is
25 binding upon a record owner, which allows for acceleration of
26 payment of the mortgage, note, or lien, or other unilateral

1 modification solely as a result of entering into an agreement
2 as provided for in this Section is not enforceable. This
3 subsection does not limit the authority of the holder or loan
4 servicer to increase the required monthly escrow by an amount
5 necessary to annually pay the qualifying energy efficiency
6 improvement.

7 (d) A provision in any agreement between a local unit of
8 government and a public or private power or energy provider or
9 other utility provider is not enforceable to limit or prohibit
10 any local unit of government from exercising its authority
11 under this Section.

12 (e) The record owner has signed a certification that the
13 local unit of government has complied with the provisions of
14 this Section, which shall be conclusive evidence as to
15 compliance with these provisions, but shall not relieve any
16 contractor, or local unit of government, from any potential
17 liability.

18 (f) This Section is additional and supplemental to county
19 and municipal home rule authority and not in derogation of such
20 authority or limitation upon such authority.

21 Section 30. Assessments constitute a lien; billing.

22 (a) An assessment imposed under a property assessed clean
23 energy program, including any interest on the assessment and
24 any penalty, shall constitute a lien against the property on
25 which the assessment is imposed until the assessment, including

1 any interest or penalty, is paid in full. The lien of the
2 assessment contract shall run with the property until the
3 assessment is paid in full and a satisfaction or release for
4 the same has been recorded with the local unit of government
5 and shall have the same priority and status as other property
6 tax and assessment liens. The local unit of government shall
7 have all rights and remedies in the case of default or
8 delinquency in the payment of an assessment as it does with
9 respect to delinquent property taxes. When the assessment,
10 including any interest and penalty, is paid, the lien shall be
11 removed from the property.

12 (b) Installments of assessments due under a program shall
13 be included in each tax bill issued under the Property Tax Code
14 and shall be collected at the same time and in the same manner
15 as taxes collected under the Property Tax Code. Alternatively,
16 installments may be billed and collected as provided in a
17 special assessment ordinance of general applicability adopted
18 by the local unit of government pursuant to State law or local
19 charter. In no event will partial payment of an assessment be
20 allowed.

21 Section 35. Bonds.

22 (a) A local unit of government may issue bonds under the
23 Special Assessment Supplemental Bond and Procedures Act to
24 finance energy projects under a property assessed clean energy
25 program.

1 (b) Bonds issued under subsection (a) shall not be general
2 obligations of the local unit of government, but shall be
3 secured by the following as provided by the governing body in
4 the resolution or ordinance approving the bonds:

5 (1) payments of assessments on benefited property
6 within the district or districts specified; and

7 (2) if applicable, revenue sources or reserves
8 established by the local unit of government from bond
9 proceeds or other lawfully available funds.

10 (c) A pledge of assessments, funds, or contractual rights
11 made by a governing body in connection with the issuance of
12 bonds by a local unit of government under this Act constitutes
13 a statutory lien on the assessments, funds, or contractual
14 rights so pledged in favor of the person or persons to whom the
15 pledge is given, without further action by the governing body.
16 The statutory lien is valid and binding against all other
17 persons, with or without notice.

18 (d) Bonds of one series issued under this Act may be
19 secured on a parity with bonds of another series issued by the
20 local unit of government pursuant to the terms of a master
21 indenture or master resolution entered into or adopted by the
22 governing body of the local unit of government.

23 (e) Bonds issued under this Act are subject to the Bond
24 Authorization Act and the Registered Bond Act.

25 (f) Bonds issued under this Act further essential public
26 and governmental purposes, including, but not limited to,

1 reduced energy costs, reduced greenhouse gas emissions,
2 economic stimulation and development, improved property
3 valuation, and increased employment.

4 (g) A program administrator can assign its rights to
5 purchase the bonds to a third party (the "bond purchaser").

6 (h) A program administrator shall retain a law firm to give
7 a bond opinion for the benefit of the program administrator or
8 bond purchaser.

9 Section 40. Joint property assessed clean energy programs.

10 (a) A local unit of government may join with any other
11 local unit of government, or with any public or private person,
12 or with any number or combination thereof, under the
13 Intergovernmental Cooperation Act, by contract or otherwise as
14 may be permitted by law, for the implementation of a property
15 assessed clean energy program, in whole or in part.

16 (b) If a program is implemented jointly by 2 or more local
17 units of government pursuant to subsection (a), a single public
18 hearing held jointly by the cooperating local units of
19 government is sufficient to satisfy the requirements of this
20 Act.

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.