



Sen. Karen McConnaughay

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LRB100 11334 HLH 24800 a

1 AMENDMENT TO SENATE BILL 1700

2 AMENDMENT NO. _____. Amend Senate Bill 1700, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

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

8 "Alternative energy improvement" means the installation or
9 upgrade of electrical wiring, outlets, or charging stations to
10 charge a motor vehicle that is fully or partially powered by
11 electricity.

12 "Assessment contract" means a voluntary written contract
13 between the local unit of government and record owner governing
14 the terms and conditions of financing and assessment under a
15 program.

16 "PACE area" means an area within the jurisdictional

1 boundaries of a local unit of government created by an
2 ordinance or resolution of the local unit of government to
3 provide financing for energy projects under a property assessed
4 clean energy program. A local unit of government may create
5 more than one PACE area under the program, and PACE areas may
6 be separate, overlapping, or coterminous.

7 "Energy efficiency improvement" means equipment, devices,
8 or materials intended to decrease energy consumption or promote
9 a more efficient use of electricity, natural gas, propane, or
10 other forms of energy on property, including, but not limited
11 to, all of the following:

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

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

19 (3) automated energy control systems;

20 (4) high efficiency heating, ventilating, or
21 air-conditioning and distribution system modifications or
22 replacements;

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

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

26 (7) energy controls or recovery systems;

1 (8) day lighting systems; and

2 (9) any other installation or modification of
3 equipment, devices, or materials approved as a utility
4 cost-savings measure by the governing body.

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

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

14 "Local unit of government" means a county, city, or
15 village.

16 "Person" means an individual, firm, partnership,
17 association, corporation, limited liability company,
18 unincorporated joint venture, trust, or any other type of
19 entity that is recognized by law and has the title to or
20 interest in property. "Person" does not include a local unit of
21 government or a homeowner's or condominium association.

22 "Program administrator" means a for-profit entity or
23 not-for profit entity that will administer a program on behalf
24 of or at the discretion of the local unit of government. It or
25 its affiliates, consultants, or advisors shall have done
26 business as a program administrator or capital provider for a

1 minimum of 18 months and shall be responsible for arranging
2 capital for the acquisition of bonds issued by the local unit
3 of government to finance energy projects.

4 "Property" means privately-owned commercial, industrial,
5 non-residential agricultural, or multi-family (of 5 or more
6 units) real property located within the local unit of
7 government, but does not include property owned by a local unit
8 of government or a homeowner's or condominium association.

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

11 "Record owner" means the person who is the titleholder or
12 owner of the beneficial interest in property.

13 "Renewable energy resource" includes energy and its
14 associated renewable energy credit or renewable energy credits
15 from wind energy, solar thermal energy, photovoltaic cells and
16 panels, biodiesel, anaerobic digestion, and hydropower that
17 does not involve new construction or significant expansion of
18 hydropower dams. For purposes of this Act, landfill gas
19 produced in the State is considered a renewable energy
20 resource. The term "renewable energy resources" does not
21 include the incineration or burning of any solid material.

22 "Renewable energy system" means a fixture, product,
23 device, or interacting group of fixtures, products, or devices
24 on the customer's side of the meter that use one or more
25 renewable energy resources to generate electricity.

26 "Water use improvement" means any fixture, product,

1 system, device, or interacting group thereof for or serving any
2 property that has the effect of conserving water resources
3 through improved water management or efficiency.

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, from time to time, create a PACE area
9 or areas 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 PACE area 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 adopt a
4 resolution or ordinance that includes all of the following:

5 (1) a finding that the financing of energy projects is
6 a valid public purpose;

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

11 (3) a description of the proposed arrangements for
12 financing the program through a program administrator;

13 (4) the types of energy projects that may be financed;

14 (5) a description of the territory within the PACE
15 area;

16 (6) reference to a report on the proposed program as
17 described in Section 20; and

18 (7) the time and place for any public hearing required
19 for the adoption of the proposed program by resolution or
20 ordinance;

21 (8) matters required by Section 20 to be included in
22 the report; for this purpose, the resolution or ordinance
23 may incorporate the report or an amended version thereof by
24 reference; and

25 (9) a description of which aspects of the program may
26 be amended without a new public hearing and which aspects

1 may be amended only after a new public hearing is held.

2 (b) A property assessed clean energy program may be amended
3 by resolution or ordinance of the governing body. Adoption of
4 the resolution or ordinance shall be preceded by a public
5 hearing if required.

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

8 (1) a form of assessment contract between the local
9 unit of government and record owner governing the terms and
10 conditions of financing and assessment under the program.

11 (2) identification of an official authorized to enter
12 into a assessment contract on behalf of the local unit of
13 government;

14 (3) a maximum aggregate annual dollar amount for all
15 financing to be provided by the program administrator under
16 the program;

17 (4) an application process and eligibility
18 requirements for financing energy projects under the
19 program;

20 (5) a method for determining interest rates on
21 assessment installments, repayment periods, and the
22 maximum amount of an assessment;

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

25 (7) a plan to raise capital to finance improvements

1 under the program pursuant to the sale of bonds, subject to
2 the Special Assessment Supplemental Bond and Procedures
3 Act, to a program administrator;

4 (8) information regarding all of the following, to the
5 extent known, or procedures to determine the following in
6 the future:

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

10 (B) any application, administration, or other
11 program fees to be charged to record owners
12 participating in the program that will be used to
13 finance costs incurred by the local unit of government
14 as a result of the program;

15 (9) a requirement that the term of an assessment not
16 exceed the useful life of the energy project paid for by
17 the assessment; provided that the local unit of government
18 may allow projects that consist of multiple improvements
19 with varying lengths of useful life to have a term that is
20 no greater than the improvement with the longest useful
21 life;

22 (10) a requirement for an appropriate ratio of the
23 amount of the assessment to the assessed value of the
24 property or market value of the property as determined by a
25 recent appraisal no older than 12 months;

26 (11) a requirement that the record owner of property

1 subject to a mortgage obtain written consent from the
2 mortgage holder before participating in the program;

3 (12) provisions for marketing and participant
4 education;

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

7 (14) quality assurance and antifraud measures.

8 Section 25. Contracts with record owners of property.

9 (a) After creation of a program and PACE area, a record
10 owner of property within the PACE area may apply with the local
11 unit of government or its program administrator for funding to
12 finance an energy project.

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

17 (c) Before entering into an assessment contract with a
18 record owner under a program, the local unit of government
19 shall verify all of the following:

20 (1) that the property is within the PACE area;

21 (2) that there are no delinquent taxes, special
22 assessments, or water or sewer charges on the property;

23 (3) that there are no delinquent assessments on the
24 property under a property assessed clean energy program;

25 (4) there are no involuntary liens on the property,

1 including, but not limited to, construction or mechanics
2 liens, lis pendens or judgments against the record owner,
3 environmental proceedings, or eminent domain proceedings;

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

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

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

16 (8) the contractors to be used have signed a written
17 acknowledgement that the local unit of government will not
18 authorize final payment to the contractor until the local
19 unit of government has received written confirmation from
20 the record owner that the improvement was properly
21 installed and is operating as intended; provided, however,
22 that the contractor retains all legal rights and remedies
23 in the event there is a disagreement with the owner;

24 (9) that the amount of the assessment in relation to
25 the greater of the assessed value of the property or the
26 appraised value of the property, as determined by a

1 licensed appraiser, does not exceed 25%; and

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

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

22 (e) A provision in any agreement between a local unit of
23 government and a public or private power or energy provider or
24 other utility provider is not enforceable to limit or prohibit
25 any local unit of government from exercising its authority
26 under this Section.

1 (f) The record owner has signed a certification that the
2 local unit of government has complied with the provisions of
3 this Section, which shall be conclusive evidence as to
4 compliance with these provisions, but shall not relieve any
5 contractor, or local unit of government, from any potential
6 liability.

7 (g) This Section is additional and supplemental to county
8 and municipal home rule authority and not in derogation of such
9 authority or limitation upon such authority.

10 Section 30. Assessments constitute a lien; billing.

11 (a) An assessment imposed under a property assessed clean
12 energy program, including any interest on the assessment and
13 any penalty, shall constitute a lien against the property on
14 which the assessment is imposed until the assessment, including
15 any interest or penalty, is paid in full. The lien of the
16 assessment contract shall run with the property until the
17 assessment is paid in full and a satisfaction or release for
18 the same has been recorded with the local unit of government
19 and shall have the same priority and status as other property
20 tax and assessment liens. The local unit of government shall
21 have all rights and remedies in the case of default or
22 delinquency in the payment of an assessment as it does with
23 respect to delinquent property taxes. When the assessment,
24 including any interest and penalty, is paid, the lien shall be
25 removed from the property.

1 (b) Installments of assessments due under a program may be
2 included in each tax bill issued under the Property Tax Code
3 and may be collected at the same time and in the same manner as
4 taxes collected under the Property Tax Code. Alternatively,
5 installments may be billed and collected as provided in a
6 special assessment ordinance of general applicability adopted
7 by the local unit of government pursuant to State law or local
8 charter. In no event will partial payment of an assessment be
9 allowed.

10 Section 35. Bonds.

11 (a) A local unit of government may issue bonds under the
12 Special Assessment Supplemental Bond and Procedures Act to
13 finance energy projects under a property assessed clean energy
14 program.

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

19 (1) payments of assessments on benefited property
20 within the PACE area or areas specified; and

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

24 (c) A pledge of assessments, funds, or contractual rights
25 made by a governing body in connection with the issuance of

1 bonds by a local unit of government under this Act constitutes
2 a statutory lien on the assessments, funds, or contractual
3 rights so pledged in favor of the person or persons to whom the
4 pledge is given, without further action by the governing body.
5 The statutory lien is valid and binding against all other
6 persons, with or without notice.

7 (d) Bonds of one series issued under this Act may be
8 secured on a parity with bonds of another series issued by the
9 local unit of government pursuant to the terms of a master
10 indenture or master resolution entered into or adopted by the
11 governing body of the local unit of government.

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

14 (f) Bonds issued under this Act further essential public
15 and governmental purposes, including, but not limited to,
16 reduced energy costs, reduced greenhouse gas emissions,
17 economic stimulation and development, improved property
18 valuation, and increased employment.

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

21 (h) A program administrator shall retain a law firm to give
22 a bond opinion for the benefit of the program administrator or
23 bond purchaser.

24 Section 40. Joint property assessed clean energy programs.

25 (a) A local unit of government may join with any other

1 local unit of government, or with any public or private person,
2 or with any number or combination thereof, under the
3 Intergovernmental Cooperation Act, by contract or otherwise as
4 may be permitted by law, for the implementation of a property
5 assessed clean energy program, in whole or in part.

6 (b) If a program is implemented jointly by 2 or more local
7 units of government pursuant to subsection (a), a single public
8 hearing held jointly by the cooperating local units of
9 government is sufficient to satisfy the requirements of this
10 Act.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law."