



Rep. Lou Lang

**Filed: 3/10/2017**

10000HB2831ham001

LRB100 06946 HLH 23391 a

1 AMENDMENT TO HOUSE BILL 2831

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2831 by replacing  
3 everything after the enacting clause with the following:

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

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

15 "PACE area" means an area within the jurisdictional  
16 boundaries of a local unit of government created by an

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

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

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

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

18 (3) automated energy control systems;

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

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

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

25 (7) energy controls or recovery systems;

26 (8) day lighting systems; and

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

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

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

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

15          "Person" means an individual, firm, partnership,  
16          association, corporation, limited liability company,  
17          unincorporated joint venture, trust, or any other type of  
18          entity that is recognized by law and has the title to or  
19          interest in property. "Person" does not include a local unit of  
20          government or 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, consultants, or advisors shall have done  
25          business as a program administrator or capital provider for a  
26          minimum of 18 months and shall be responsible for providing

1 capital for the acquisition of bonds issued by the local unit  
2 of government to finance energy projects.

3 "Property" means privately-owned commercial, industrial,  
4 agricultural, or multi-family (of 5 or more units) real  
5 property located within the local unit of government.

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

8 "Record owner" means the titleholder or owner of the  
9 beneficial interest in property.

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

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

23 "Water use improvement" means any fixture, product,  
24 system, device, or interacting group thereof for or serving any  
25 property that has the effect of conserving water resources  
26 through improved water management or efficiency.

1 Section 10. Property assessed clean energy program;  
2 creation.

3 (a) Pursuant to the procedures provided in Section 15, a  
4 local unit of government may establish a property assessed  
5 clean energy program and, from time to time, create a PACE area  
6 or areas under the program.

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

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

22 Section 15. Program established.

23 (a) To establish a property assessed clean energy program,  
24 the governing body of a local unit of government shall adopt a

1 resolution or ordinance that includes all of the following:

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

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

8 (3) a description of the proposed arrangements for  
9 financing the program through a program administrator;

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

11 (5) a description of the territory within the PACE  
12 area;

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

15 (7) the time and place for any public hearing required  
16 for the adoption of the proposed program by resolution or  
17 ordinance;

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

22 (9) a description of which aspects of the program may  
23 be amended without a new public hearing and which aspects  
24 may be amended only after a new public hearing is held.

25 (b) A property assessed clean energy program may be amended  
26 by resolution or ordinance of the governing body. Adoption of

1 the resolution or ordinance shall be preceded by a public  
2 hearing if required.

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

5 (1) a form of assessment contract between the local  
6 unit of government and record owner governing the terms and  
7 conditions of financing and assessment under the program.

8 (2) identification of an official authorized to enter  
9 into a assessment contract on behalf of the local unit of  
10 government;

11 (3) a maximum aggregate annual dollar amount for all  
12 financing to be provided by the program administrator under  
13 the program;

14 (4) an application process and eligibility  
15 requirements for financing energy projects under the  
16 program;

17 (5) a method for determining interest rates on  
18 assessment installments, repayment periods, and the  
19 maximum amount of an assessment;

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

22 (7) a plan to raise capital to finance improvements  
23 under the program pursuant to the sale of bonds, subject to  
24 the Special Assessment Supplemental Bond and Procedures  
25 Act, to a program administrator;

1 (8) information regarding all of the following, to the  
2 extent known, or procedures to determine the following in  
3 the future:

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

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

12 (9) a requirement that the term of an assessment not  
13 exceed the useful life of the energy project paid for by  
14 the assessment; provided that projects that consist of  
15 multiple improvements with varying lengths of useful life  
16 shall have a term that is no greater than the length of the  
17 useful life of the improvement with the longest useful  
18 life;

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

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

26 (12) provisions for marketing and participant



1 education;

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

4 (14) quality assurance and antifraud measures.

5 Section 25. Contracts with record owners of property.

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

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

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

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

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

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

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

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

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

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

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

21           (9) that the amount of the assessment in relation to  
22 the greater of the assessed value of the property or the  
23 appraised value of the property, as determined by a  
24 licensed appraiser, does not exceed 25%; and

25           (10) a requirement that an assessment of the existing  
26 water or energy use and a modeling of expected monetary

1 savings have been conducted for any proposed project.

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

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

24 (f) The record owner has signed a certification that the  
25 local unit of government has complied with the provisions of  
26 this Section, which shall be conclusive evidence as to

1 compliance with these provisions, but shall not relieve any  
2 contractor, or local unit of government, from any potential  
3 liability.

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

7 Section 30. Assessments constitute a lien; billing.

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

23 (b) Installments of assessments due under a program may be  
24 included in each tax bill issued under the Property Tax Code  
25 and may be collected at the same time and in the same manner as

1 taxes collected under the Property Tax Code. Alternatively,  
2 installments may be billed and collected as provided in a  
3 special assessment ordinance of general applicability adopted  
4 by the local unit of government pursuant to State law or local  
5 charter. In no event will partial payment of an assessment be  
6 allowed.

7 Section 35. Bonds.

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

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

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

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

21 (c) A pledge of assessments, funds, or contractual rights  
22 made by a governing body in connection with the issuance of  
23 bonds by a local unit of government under this Act constitutes  
24 a statutory lien on the assessments, funds, or contractual  
25 rights so pledged in favor of the person or persons to whom the

1 pledge is given, without further action by the governing body.  
2 The statutory lien is valid and binding against all other  
3 persons, with or without notice.

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

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

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

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

18 (h) A program administrator shall retain a law firm to give  
19 a bond opinion for the benefit of the program administrator or  
20 bond purchaser.

21 Section 40. Joint property assessed clean energy programs.

22 (a) A local unit of government may join with any other  
23 local unit of government, or with any public or private person,  
24 or with any number or combination thereof, under the  
25 Intergovernmental Cooperation Act, by contract or otherwise as

1 may be permitted by law, for the implementation of a property  
2 assessed clean energy program, in whole or in part.

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

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.".