

AN ACT concerning government.

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

Section 5. The Property Assessed Clean Energy Act is amended by changing Sections 5, 10, 15, 20, 25, 30, and 35 as follows:

(50 ILCS 50/5)

Sec. 5. Definitions. As used in this Act:

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

"Assessment contract" means a voluntary written contract between the local unit of government (or a permitted assignee) and record owner governing the terms and conditions of financing and assessment under a program.

"Authority" means the Illinois Finance Authority.

"PACE area" means an area within the jurisdictional boundaries of a local unit of government created by an ordinance or resolution of the local unit of government to provide financing for energy projects under a property assessed clean energy program. A local unit of government may create more than one PACE area under the program, and PACE areas may

be separate, overlapping, or coterminous.

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

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

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

(3) automated energy control systems;

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

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

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

(7) energy controls or recovery systems;

(8) day lighting systems; ~~and~~

(8.1) any energy efficiency project, as defined in Section 825-65 of the Illinois Finance Authority Act; and

(9) any other installation or modification of equipment, devices, or materials approved as a utility

cost-savings measure by the governing body.

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

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

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

"Permitted assignee" means (i) any body politic and corporate, (ii) any bond trustee, or (iii) any warehouse lender, or any other assignee of a local unit of government designated in an assessment contract.

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

"Program administrator" means a for-profit entity or not-for profit entity that will administer a program on behalf

of or at the discretion of the local unit of government. It or its affiliates, consultants, or advisors shall have done business as a program administrator or capital provider for a minimum of 18 months and shall be responsible for arranging capital for the acquisition of bonds issued by the local unit of government or the Authority to finance energy projects.

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

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

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

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

"Renewable energy system" means a fixture, product, device, or interacting group of fixtures, products, or devices

on the customer's side of the meter that use one or more renewable energy resources to generate electricity, and specifically includes any renewable energy project, as defined in Section 825-65 of the Illinois Finance Authority Act.

"Warehouse fund" means any fund established by a local unit of government, body politic and corporate, or warehouse lender.

"Warehouse lender" means any financial institution participating in a PACE area that finances an energy project from lawfully available funds in anticipation of issuing bonds as described in Section 35.

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

(Source: P.A. 100-77, eff. 8-11-17.)

(50 ILCS 50/10)

Sec. 10. Property assessed clean energy program; creation.

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

(b) Under a program, the local unit of government may enter into an assessment contract with the record owner of property within a PACE area to finance or refinance one or more energy projects on the property. The assessment contract shall provide

for the repayment of the cost of an energy project through assessments upon the property benefited. The financing or refinancing may include any and all of the following: the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that may be incurred by the record owner pursuant to the installation and the issuance of bonds on a specific or pro rata basis, as determined by the local unit of government and may also include a prepayment premium.

(b-5) A local unit of government may sell or assign, for consideration, any and all assessment contracts; the permitted assignee of the assessment contract shall have and possess the same powers and rights at law or in equity as the applicable local unit of government and its tax collector would have if the assessment contract had not been assigned with regard to (i) the precedence and priority of liens evidenced by the assessment contract, (ii) the accrual of interest, and (iii) the fees and expenses of collection. The permitted assignee shall have the same rights to enforce such liens as any private party holding a lien on real property, including, but not limited to, foreclosure. Costs and reasonable attorney's fees incurred by the permitted assignee as a result of any foreclosure action or other legal proceeding brought pursuant to this Section and directly related to the proceeding shall be assessed in any such proceeding against each record owner subject to the proceedings. Such costs and fees may be

collected by the assignee at any time after demand for payment has been made by the permitted assignee.

(c) A program may be administered by one or more ~~a~~ program administrators ~~administrator~~ or the local unit of government.

(Source: P.A. 100-77, eff. 8-11-17.)

(50 ILCS 50/15)

Sec. 15. Program established.

(a) To establish a property assessed clean energy program, the governing body of a local unit of government shall adopt a resolution or ordinance that includes all of the following:

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

(2) a statement of intent to facilitate access to capital (which may be from one or more ~~a~~ program administrators) ~~administrator~~ to provide funds for energy projects, which will be repaid by assessments on the property benefited with the agreement of the record owners;

(3) a description of the proposed arrangements for financing the program, which may be through one or more ~~a~~ program administrators ~~administrator~~;

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

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

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

(7) the time and place for a ~~any~~ public hearing to be held by the local unit of government if required for the adoption of the proposed program by resolution or ordinance;

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

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

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

(Source: P.A. 100-77, eff. 8-11-17; revised 10-3-17.)

(50 ILCS 50/20)

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

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

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

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

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

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

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

(7) a plan to raise capital to finance improvements under the program pursuant to the sale of bonds, subject to this Act or the Special Assessment Supplemental Bond and Procedures Act, or alternatively, through the sale of bonds by the Authority pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act ~~to a program administrator;~~

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

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

(B) any application, administration, or other program fees to be charged to record owners

participating in the program that will be used to finance costs incurred by the local unit of government as a result of the program;

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

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

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

(12) provisions for marketing and participant education;

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

(14) quality assurance and antifraud measures.

(Source: P.A. 100-77, eff. 8-11-17.)

(50 ILCS 50/25)

Sec. 25. Contracts with record owners of property.

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

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

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

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

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

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

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

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

(6) that the record owner is current on all mortgage debt on the property, the record owner has not filed for bankruptcy in the last 2 years, and the property is not an

asset to a current bankruptcy.

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

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

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

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

(d) At least 30 days before entering into an assessment contract ~~agreement~~ with the local unit of government, the record owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the record owner's intent to enter into an

assessment contract with the local unit of government, together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount, along with a request that the holders or loan servicers of any existing mortgages consent to the record owner subjecting the property to the program. A verified copy or other proof of those notices and the written consent of the existing mortgage holder for the record owner to enter into the assessment contract and acknowledging that the existing mortgage will be subordinate to the financing and assessment agreement and that the local unit of government or its permitted assignee can foreclose the property if the assessment is not paid shall be provided to the local unit of government.

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

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

(g) This Section is additional and supplemental to county and municipal home rule authority and not in derogation of such

authority or limitation upon such authority.

(h) The imposition of any assessment pursuant to this Act shall be exempt from any other statutory procedures or requirements that condition the imposition of assessments or other taxes against a property, except as set forth in this Act.

(Source: P.A. 100-77, eff. 8-11-17.)

(50 ILCS 50/30)

Sec. 30. Assessments constitute a lien; billing.

(a) An assessment imposed under a property assessed clean energy program pursuant to an assessment contract, including any interest on the assessment and any penalty, shall, upon recording of the assessment contract in the county in which the PACE area is located, constitute a lien against the property on which the assessment is imposed until the assessment, including any interest or penalty, is paid in full. The lien of the assessment contract shall run with the property until the assessment is paid in full and a satisfaction or release for the same has been recorded with the local unit of government and shall have the same priority and status as other property tax and assessment liens. The local unit of government (or any permitted assignee) shall have all rights and remedies in the case of default or delinquency in the payment of an assessment as it does with respect to delinquent property taxes. When the assessment, including any interest and penalty, is paid, the

lien shall be removed from the property.

(a-5) The assessment shall be imposed by the local unit of government against each lot, block, track and parcel of land within the PACE area to be assessed in accordance with an assessment roll setting forth: (i) a description of the method of spreading the assessment; (ii) a list of lots, blocks, tracts and parcels of land in the PACE area; and (iii) the amount assessed on each parcel. The assessment roll shall be filed with the county clerk of the county in which the PACE area is located for use in establishing the lien and collecting the assessment.

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

(Source: P.A. 100-77, eff. 8-11-17.)

(50 ILCS 50/35)

Sec. 35. Bonds.

(a) A local unit of government may issue bonds under this Act or the Special Assessment Supplemental Bond and Procedures

Act, or the Authority may issue bonds under subsection (d) of Section 825-65 of the Illinois Finance Authority Act upon assignment of the assessment contracts securing such bonds by the local unit of government to the Authority, in either case to finance energy projects under a property assessed clean energy program. Interim financing prior to the issuance of bonds authorized by this Section may be provided only by a warehouse fund, except that warehouse funds established by a warehouse lender may only hold assessment contracts for 36 months or less.

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

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

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

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

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

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

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

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

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

(h) ~~A program administrator shall retain a law firm~~ shall be retained to give a bond opinion in connection with any bond issued under this Act ~~for the benefit of the program administrator or bond purchaser~~.

(i) Bonds issued by the Authority under this Act and pursuant to subsection (d) of Section 825-65 of the Illinois Finance Authority Act shall not be entitled to the benefits of Section 825-75 of the Illinois Finance Authority Act.

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(Source: P.A. 100-77, eff. 8-11-17.)