

HOUSE BILL No. 2350

By Committee on Vision 2020

2-13

1 AN ACT concerning municipalities; relating to property assessments,
2 qualified clean energy improvements.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) For the purposes of this section:

6 (1) "Local government" means any county, metropolitan government,
7 municipality or other political subdivision of the state;

8 (2) "PACE program" or "program" means a property assessed clean
9 energy program established under this section;

10 (3) "qualified improvement" means a permanent improvement fixed
11 to real property and intended to decrease or offset water or energy
12 consumption or demand, including a product, a device, or an interacting
13 group of products or devices that uses energy technology to generate
14 electricity, provide thermal energy, regulate temperature, or increase
15 energy efficiency;

16 (4) "qualified project" means the installation or modification of a
17 qualified improvement;

18 (5) "real property" means privately owned commercial or industrial
19 real property or residential real property; and

20 (6) "region" means a PACE region designated pursuant to subsection
21 (d).

22 (b) (1) A local government may impose an assessment to repay the
23 financing of qualified projects on real property located in a region. An
24 assessment may not be imposed to repay the financing of:

25 (A) Facilities for undeveloped lots or lots undergoing development at
26 the time of the assessment; or

27 (B) the purchase or installation of products or devices not
28 permanently fixed to real property.

29 (2) A local government may impose an assessment only after entering
30 into a written contract with the record owner of the real property to be
31 assessed.

32 (3) A local government may establish a PACE program and exercise
33 all powers granted under this section. Any local government that
34 establishes a program may enter into a written contract with a record
35 owner of real property in a region to impose an assessment to repay the
36 owner's financing of a qualified project on the owner's property. The

1 financing to be repaid through assessments may be provided by a third
2 party or, if authorized by the program, by the local government.

3 (4) If the program provides for:

4 (A) Third-party financing, the local government official authorized to
5 enter into a written contract with a property owner pursuant to this
6 subsection shall also enter into a written contract with the party that
7 provides financing for a qualified project under the program to service the
8 debt through assessments;

9 (B) local government financing, the written contract described in
10 subsection (b) shall be a contract to finance the qualified project through
11 assessments.

12 (c) The financing for assessments imposed may include:

13 (1) The cost of materials and labor necessary for the installation or
14 modification of a qualified improvement;

15 (2) permit fees;

16 (3) inspection fees;

17 (4) lender fees;

18 (5) program application and administrative fees;

19 (6) project development and engineering fees;

20 (7) third-party review fees, including any applicable verification
21 review fees; and

22 (8) any other fees or costs incurred by the property owner incident to
23 the installation, modification or improvement on a specific or pro rata
24 basis, as determined by the local government.

25 (d) (1) The local government may designate an area as a region in
26 which authorized local government officials and record owners of real
27 property may enter into written contracts to impose assessments to repay
28 the financing by owners of qualified projects on the owners' property and,
29 if authorized by the local government program, to finance the qualified
30 project. An area designated as a region by the local government:

31 (A) May include the entire local government; and

32 (B) shall be located completely within the local government's
33 jurisdiction.

34 (2) A local government may designate more than one area as a region.
35 If multiple regions are designated, the regions may be separate,
36 overlapping, or coterminous.

37 (e) To establish a PACE program, the local government shall:

38 (1) Adopt a resolution of intent that includes:

39 (A) A finding that, if appropriate, the financing of qualified projects
40 through contractual assessments is a valid public purpose;

41 (B) a statement that the local government intends to make contractual
42 assessments to repay financing for qualified projects available to property
43 owners;

- 1 (C) a description of the types of qualified projects that may be subject
- 2 to contractual assessments;
- 3 (D) a description of the boundaries of the region;
- 4 (E) a description of any proposed arrangements for third-party
- 5 financing to be available or any local government financing to be provided
- 6 for qualified projects;
- 7 (F) a description of local government debt-servicing procedures if
- 8 third-party financing is provided and assessments are collected to service a
- 9 third-party debt;
- 10 (G) a statement of the time and place for the public hearing on the
- 11 proposed program as required by this subsection; and
- 12 (H) a statement identifying the appropriate local official and the
- 13 county assessor of property for consulting about the collection of proposed
- 14 contractual assessments with property taxes imposed on the assessed
- 15 property;
- 16 (2) hold a hearing for the public to comment on the proposed
- 17 program; and
- 18 (3) adopt a resolution establishing the program and the terms of such
- 19 program. The resolution may incorporate a description of each aspect of
- 20 the program. Subject to the terms of a resolution, the program may be
- 21 amended by resolution by the local government, but only after a public
- 22 hearing is held.
- 23 (f) A local government may:
- 24 (1) Hire and set the compensation of a program administrator and
- 25 program staff;
- 26 (2) contract for professional services necessary to administer a
- 27 program; or
- 28 (3) impose fees to offset the costs of administering a program. The
- 29 fees authorized by this subsection may be assessed as:
- 30 (A) A program application fee paid by the property owner requesting
- 31 to participate in the program; or
- 32 (B) a component of the interest rate on the assessment in the written
- 33 contract between the local government and the property owner.
- 34 (g) The local government shall create a report for any proposed
- 35 program that shall include:
- 36 (1) A map showing the boundaries of the proposed region;
- 37 (2) a form contract between the local government and the property
- 38 owner specifying the terms of:
- 39 (A) Assessment under the program; and
- 40 (B) financing provided by a third party or the local government, as
- 41 appropriate;
- 42 (3) a form contract between the local government and the third party
- 43 regarding the servicing of the debt through assessments, if the proposed

- 1 program provides for third-party financing;
- 2 (4) a description of the types of qualified projects that may be subject
3 to contractual assessments;
- 4 (5) a statement identifying the local government official authorized to
5 enter into written contracts on behalf of the local government;
- 6 (6) a plan for ensuring sufficient capital for third-party financing and,
7 if applicable, raising capital for local government financing for qualified
8 projects;
- 9 (7) if bonds will be issued to provide capital to finance qualified
10 projects as part of the program:
- 11 (A) A maximum aggregate annual dollar amount for financing
12 through contractual assessments, to be provided by the local government
13 under the program;
- 14 (B) a method for ranking requests from property owners for financing
15 through contractual assessments in order of priority, if the number of
16 requests appears likely to exceed the authorization amount; and
- 17 (C) a method for determining the:
- 18 (i) Interest rate and period during which contracting owners would
19 pay an assessment; and
- 20 (ii) maximum amount of an assessment;
- 21 (8) a method for ensuring that the period of the contractual
22 assessment does not exceed the useful life of the qualified project that is
23 the basis for the assessment;
- 24 (9) a description of the application process and eligibility
25 requirements for financing qualified projects to be repaid through
26 contractual assessments under the program;
- 27 (10) a method for ensuring that property owners requesting to
28 participate in the program demonstrate the financial ability to fulfill
29 financial obligations to be repaid through contractual assessments;
- 30 (11) a statement explaining the manner in which property will be
31 assessed and how assessments will be collected;
- 32 (12) a statement explaining the lender notice requirement;
- 33 (13) a statement explaining the review requirement;
- 34 (14) a description of marketing and participant education services to
35 be provided for the program;
- 36 (15) a description of quality assurance and anti-fraud measures to be
37 instituted for the program; and
- 38 (16) the procedures for collecting the proposed contractual
39 assessments.
- 40 (h) The method for ensuring a demonstration of financial ability
41 pursuant to subsection (g)(10) shall be based on appropriate underwriting
42 factors, including:
- 43 (1) Verification that the:

- 1 (A) Property owner requesting to participate in the program is:
- 2 (i) The legal owner of the benefited property;
- 3 (ii) current on mortgage and property tax payments; and
- 4 (iii) not insolvent or in bankruptcy proceedings; and
- 5 (B) title of the benefited property is not in dispute; and
- 6 (2) requiring an appropriate ratio of the amount of the assessment to
- 7 the assessed value of the property.
- 8 (i) The local government shall make the report available for public
- 9 inspection:
- 10 (1) On the local government's web site; and
- 11 (2) at the office of the official designated to enter into written
- 12 contracts on behalf of the local government under the program.
- 13 (j) Before a local government may enter into a written contract with a
- 14 record owner of real property to impose an assessment to repay the
- 15 financing of a qualified project, the holder of any mortgage lien on the
- 16 property shall be given written notice of the owner's intention to
- 17 participate in a PACE program at least 45 days before the date the written
- 18 contract for assessment between the owner and the local government is
- 19 executed. Any objection to the notice of intent shall specifically state the
- 20 nature and basis of objection and the manner in which the program impairs
- 21 the interest of the holder of the mortgage lien.
- 22 (k) After a qualified project is completed, the local government shall
- 23 obtain verification that the qualified project was properly completed and is
- 24 operating as intended. A verification of energy efficiency by the state
- 25 corporation commission or a local electric public utility, as defined in
- 26 K.S.A. 66-101a, and amendments thereto, shall satisfy the requirements of
- 27 this subsection.
- 28 (l) The proposed arrangements for financing a qualified project may
- 29 authorize the property owner to:
- 30 (1) Purchase directly the related equipment and materials for the
- 31 installation or modification of a qualified improvement;
- 32 (2) contract directly, including through lease, power purchase
- 33 agreement or other service contract, for the related equipment and
- 34 materials used in the installation or modification of a qualified
- 35 improvement.
- 36 (m) (1) A local government that authorizes financing through
- 37 contractual assessments under this section shall file written notice of each
- 38 contractual assessment in the records of the office of the county register of
- 39 deeds of the county in which the property is located.
- 40 (2) The notice required pursuant to this subsection shall contain:
- 41 (A) The amount of the assessment;
- 42 (B) the legal description of the property;
- 43 (C) the name of each property owner; and

1 (D) a reference to the statutory assessment lien provided pursuant to
2 this section.

3 (n) (1) A contractual assessment under this section and any interest or
4 penalties on the assessment:

5 (A) Is a first and prior lien against the real property on which the
6 assessment is imposed from the date on which the notice of contractual
7 assessment is recorded until the assessment, interest or penalty is paid; and

8 (B) has the same priority status as a lien for any other ad valorem tax.

9 (2) The lien shall run with the land and that portion of the assessment
10 under the assessment contract that is not yet due shall not be eliminated by
11 foreclosure of a property tax lien.

12 (3) The assessment lien may be enforced by the local government in
13 the same manner that a property tax lien against real property may be
14 enforced by the local government.

15 (4) Delinquent installments of the assessments shall incur interest and
16 penalties in the same manner as delinquent property taxes.

17 (5) A local government may recover costs and expenses, including
18 attorney fees, in an action to collect a delinquent installment of an
19 assessment in the same manner as in an action to collect a delinquent
20 property tax.

21 (o) The local government may contract with another local
22 governmental entity, including a county assessor of property, to perform
23 the duties of the local government relating to the collection of assessments
24 imposed pursuant to this section.

25 (p) (1) A local government may issue bonds or notes to finance
26 qualified projects through contractual assessments pursuant to this section.

27 (2) Bonds or notes issued pursuant to this section may not be general
28 obligations of the local government. The bonds or notes shall be secured
29 by one or more of the following as provided by the local government in
30 the resolution or the ordinance approving the bonds or notes:

31 (A) Payments of contractual assessments on benefited property in one
32 or more specified regions designated under this section;

33 (B) reserves established by the local government from grants, bonds,
34 net proceeds or other legally available funds;

35 (C) municipal bond insurance, lines of credit, public or private
36 guaranties, standby bond purchase agreements, collateral assignments,
37 mortgages or any other available means of providing credit support or
38 liquidity; or

39 (D) any other funds lawfully available for purposes consistent with
40 this section.

41 (3) A local government pledge of assessments, funds or contractual
42 rights in connection with the issuance of bonds or notes by the local
43 government under this section is a first lien on the assessments, funds or

1 contractual rights pledged in favor of any person that receives such pledge.
2 The lien is valid and binding against any other person, with or without
3 notice.

4 (4) Bonds or notes issued pursuant to this section further an essential
5 public and governmental purpose, including:

6 (A) Improvement of the reliability of the state-regulated and local
7 power company electrical system, grid, and services through energy
8 conservation and distributed generation;

9 (B) conservation of state water resources;

10 (C) reduction of energy costs;

11 (D) economic stimulation and development;

12 (E) enhancement of property values; and

13 (F) enhancement of employment opportunities.

14 (q) Any combination of local governments may agree to jointly
15 implement or administer a program under this section. If two or more local
16 governments implement a program jointly, a single public hearing held
17 jointly by the cooperating local governments is sufficient to satisfy the
18 requirement of subsection (e)(1)(B). One or more local governments may
19 contract with a third party, including another local government, to
20 administer a program.

21 (r) A local government that establishes a region shall not:

22 (1) Make the issuance of a permit, license or other authorization from
23 the local government to a person who owns property in the region
24 contingent on the person entering into a written contract to repay the
25 financing of a qualified project through contractual assessments under this
26 section; or

27 (2) otherwise compel a person who owns property in the region to
28 enter into a written contract to repay the financing of a qualified project
29 through contractual assessments.

30 (s) If any provision of this section is held invalid or unconstitutional
31 or its application to any person or circumstance is held invalid or
32 unconstitutional, it shall be conclusively presumed that the legislature
33 would have enacted the remainder of the section without such invalid or
34 unconstitutional provision.

35 Sec. 2. This act shall take effect and be in force from and after
36 January 1, 2016, and its publication in the statute book.