

H. B. 4468

(By Delegates Fleischauer, Manypenny,
Fragale, Wells, Lawrence, Skinner, Guthrie
and Sponaugle)

[Introduced February 11, 2014; referred to the
Committee on Energy then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §5B-2I-1, §5B-2I-2,
§5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6 and §5B-2I-7, all
relating to authorizing local units of government to adopt
property assessed clean energy programs and to create
districts to promote the use of renewable energy systems and
energy efficiency improvements by owners of certain real
property; to provide for the financing of such programs
through voluntary property assessments, commercial lending,
and other means; to authorize a local unit of government to
issue bonds, notes, and other evidences of indebtedness and to
pay the cost of renewable energy systems and energy efficiency
improvements from the proceeds thereof; to provide for the
repayment of bonds, notes, and other evidences of
indebtedness; to authorize certain fees; to prescribe the
powers and duties of certain governmental officers and

1 entities; and to provide for remedies.

2 *Be it enacted by the Legislature of West Virginia:*

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new article, designated §5B-2I-1, §5B-2I-2,
5 §5B-2I-3, §5B-2I-4, §5B-2I-5, §5B-2I-6 and §5B-2I-7, all to read as
6 follows:

7 **ARTICLE 2I. PROPERTY ASSESSED CLEAN ENERGY ACT.**

8 **§5B-2I-1. Short title.**

9 This article shall be known and may be cited as the "Property
10 Assessed Clean Energy Act".

11 **§5B-2I-2. Definitions.**

12 As used in this article:

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

19 (2) "Energy efficiency improvement" means equipment, devices,
20 or materials intended to decrease energy consumption, including,
21 but not limited to, all of the following:

22 (A) Insulation in walls, roofs, floors, foundations, or
23 heating and cooling distribution systems.

1 (B) Storm windows and doors; multiglazed windows and doors;
2 heat-absorbing or heat-reflective glazed and coated window and door
3 systems; and additional glazing, reductions in glass area, and
4 other window and door system modifications that reduce energy
5 consumption.

6 (C) Automated energy control systems.

7 (D) Heating, ventilating, or air-conditioning and distribution
8 system modifications or replacements.

9 (E) Caulking, weather-stripping, and air sealing.

10 (F) Replacement or modification of lighting fixtures to reduce
11 the energy use of the lighting system.

12 (G) Energy recovery systems.

13 (H) Day lighting systems.

14 (I) Installation or upgrade of electrical wiring or outlets to
15 charge a motor vehicle that is fully or partially powered by
16 electricity.

17 (J) Measures to reduce the usage of water or increases the
18 efficiency of water usage.

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

22 (3) "Energy project" means the installation or modification of
23 an energy efficiency improvement or the acquisition, installation,
24 or improvement of a renewable energy system.

1 (4) "Governing body" means the county board of commissioners
2 of a county, or the council or other similar elected legislative
3 body of a city or village.

4 (5) "Local unit of government" means a county, city or
5 village.

6 (6) "Person" means an individual, firm, partnership,
7 association, corporation, unincorporated joint venture, or trust,
8 organized, permitted, or existing under the laws of this state or
9 any other state, including a federal corporation, or a combination
10 thereof. However, person does not include a local unit of
11 government.

12 (7) "Property" means privately owned commercial or industrial
13 real property located within the local unit of government.

14 (8) "Property assessed clean energy program" or "program"
15 means a program as described in section three of this article.

16 (9) "Record owner" means the person or persons possessed of
17 the most recent fee title or land contract vendee's interest in
18 property as shown by the records of the county register of deeds.

19 (10) "Renewable energy resource" means a resource that
20 naturally replenishes over a human, not a geological, time frame
21 and that is ultimately derived from solar power, water power, or
22 wind power. Renewable energy resource does not include petroleum,
23 nuclear, natural gas or coal. A renewable energy resource comes
24 from the sun or from thermal inertia of the earth and minimizes the

1 output of toxic material in the conversion of the energy and
2 includes, but is not limited to, all of the following:

3 (A) Biomass.

4 (B) Solar and solar thermal energy.

5 (C) Wind energy.

6 (D) Geothermal energy.

7 (E) Methane gas captured from a landfill.

8 (11) "Renewable energy system" means a fixture, product,
9 device, or interacting group of fixtures, products, or devices on
10 the customer's side of the meter that use one or more renewable
11 energy resources to generate electricity. Renewable energy system
12 includes a biomass stove but does not include an incinerator or
13 digester.

14 **§5B-2I-3. Establishment of property assessed clean energy program.**

15 (a) Pursuant to the procedures set forth in this section, a
16 local unit of government may establish a property assessed clean
17 energy program and may, from time to time, create a district or
18 districts under the program.

19 (b) Under a program, the local unit of government may enter
20 into a contract with the record owner of property within a district
21 to finance or refinance one or more energy projects on the
22 property. The contract may provide for the repayment of the cost of
23 an energy project through assessments upon the property benefited.
24 The financing or refinancing may include the cost of materials and

1 labor necessary for installation, permit fees, inspection fees,
2 application and administrative fees, bank fees, and all other fees
3 that may be incurred by the record owner pursuant to the
4 installation on a specific or pro rata basis, as determined by the
5 local unit of government.

6 (c) To establish a property assessed clean energy program, the
7 governing body of a local unit of government shall take the
8 following actions in the following order:

9 (1) Adopt a resolution of intent that includes all of the
10 following:

11 (A) A finding that the financing of energy projects is a valid
12 public purpose.

13 (B) A statement of intent to provide funds for energy
14 projects, which may be repaid by assessments on the property
15 benefited, with the agreement of the record owners.

16 (C) A description of the proposed arrangements for financing
17 the program.

18 (D) The types of energy projects that may be financed.

19 (E) Reference to a report on the proposed program as described
20 in section four and a location where the report is available
21 pursuant to section four of this article.

22 (F) The time and place for a public hearing on the proposed
23 program.

24 (2) Hold a public hearing at which the public may comment on

1 the proposed program, including the report required by section four
2 of this article.

3 (3) Adopt a resolution establishing the program and setting
4 forth its terms and conditions, including all of the following:

5 (A) Matters required by section four of this article to be
6 included in the report. For this purpose, the resolution may
7 incorporate the report or an amended version thereof by reference.

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

11 (d) A property assessed clean energy program may be amended by
12 resolution of the governing body. Adoption of the resolution shall
13 be preceded by a public hearing if required pursuant to subdivision
14 (3), subsection (c).

15 **§5B-2I-4. Report requirements on proposed property assessed clean**
16 **energy program.**

17 (a) The report on the proposed program required under section
18 three of this article shall include all of the following:

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

22 (2) Identification of an official authorized to enter into a
23 program contract on behalf of the local unit of government.

24 (3) A maximum aggregate annual dollar amount for all financing

1 to be provided by the local unit of government under the program.

2 (4) An application process and eligibility requirements for
3 financing energy projects under the program.

4 (5) A method for determining interest rates on assessment
5 installments, repayment periods, and the maximum amount of an
6 assessment.

7 (6) Explanation of how assessments will be made and collected
8 consistent with section four of this article.

9 (7) A plan for raising capital to finance improvements under
10 the program. The plan may include any of the following:

11 (A) The sale of bonds or notes, subject to appropriate laws
12 and regulations.

13 (B) Amounts to be advanced by the local unit of government
14 through funds available to it from any other source.

15 (C) Owner-arranged financing from a commercial lender. Under
16 owner-arranged financing, the local unit of government may impose
17 an assessment pursuant to section five of this article and forward
18 payments to the commercial lender or the record owner may pay the
19 commercial lender directly.

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

22 (A) Any reserve fund or funds to be used as security for bonds
23 or notes described in subdivision (7) of this section.

24 (B) Any application, administration, or other program fees to

1 be charged to record owners participating in the program that will
2 be used to finance costs incurred by the local unit of government
3 as a result of the program.

4 (9) A requirement that the term of an assessment not exceed
5 the useful life of the energy project paid for by the assessment.

6 (10) A requirement for an appropriate ratio of the amount of
7 the assessment to the assessed value of the property.

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

11 (12) Provisions for marketing and participant education.

12 (13) Provisions for adequate debt service reserve fund.

13 (14) Quality assurance and antifraud measures.

14 (15) A requirement that a baseline energy audit be conducted
15 before an energy project is undertaken, to establish future energy
16 savings. After the energy project is completed, the local unit of
17 government shall obtain verification that the renewable energy
18 system or energy efficiency improvement was properly installed and
19 is operating as intended.

20 (16) For an energy project financed with more than \$250,000 in
21 assessments, both of the following:

22 (A) A requirement for ongoing measurements that establish the
23 savings realized by the record owner from the energy project.

24 (B) A requirement that, in the contract for installation of

1 the energy project, the contractor guarantee to the record owner
2 that the energy project will achieve a savings-to-investment ratio
3 greater than one and agree to pay the record owner, on an annual
4 basis, any shortfall in savings below this level.

5 (b) The local unit of government shall make the report
6 available for review on the local unit of government's website or
7 at the office of the clerk or the official authorized to enter
8 contracts on behalf of the local unit of government under the
9 property assessed clean energy program.

10 **§5B-2I-5. Assessment imposed under a property assessed clean**
11 **energy program.**

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

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

18 (1) That there are no delinquent taxes, special assessments,
19 or water or sewer charges on the property.

20 (2) That there are no delinquent assessments on the property
21 under a property assessed clean energy program.

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

1 assessment is imposed until the assessment, including any interest
2 or penalty, is paid in full. The lien runs with the property and
3 has the same priority and status as other property tax and
4 assessment liens. The local unit of government has all rights in
5 the case of delinquency in the payment of an assessment as it does
6 with respect to delinquent property taxes. When the assessment,
7 including any interest and penalty, is paid, the lien shall be
8 removed from the property.

9 (d) Installments of assessments due under a program shall be
10 included in each property tax bill and shall be collected at the
11 same time and in the same manner as property taxes collected
12 according to article one, chapter eleven-a of this code.
13 Alternatively, installments may be billed and collected as provided
14 in a special assessment ordinance of general applicability adopted
15 by the local unit of government pursuant to state law or local
16 charter.

17 **§5B-2I-6. Issuance of bonds.**

18 (a) A local unit of government may issue bonds or notes to
19 finance energy projects under a property assessed clean energy
20 program.

21 (b) Bonds or notes issued under subsection (a) may not be
22 general obligations of the local unit of government, but shall be
23 secured by one or more of the following as provided by the
24 governing body in the resolution or ordinance approving the bonds

1 or notes:

2 (1) Payments of assessments on benefited property within the
3 district or districts specified.

4 (2) Reserves established by the local unit of government from
5 grants, bond or note proceeds, or other lawfully available funds.

6 (3) Municipal bond insurance, lines or letters of credit,
7 public or private guaranties, standby bond purchase agreements,
8 collateral assignments, mortgages, and any other available means of
9 providing credit support or liquidity.

10 (4) Tax increment revenues that may be lawfully available for
11 such purposes.

12 (5) Any other amounts lawfully available for such purposes.

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

21 (d) Bonds or notes of one series issued under this article may
22 be secured on a parity with bonds or notes of another series issued
23 by the local unit of government pursuant to the terms of a master
24 indenture or master resolution entered into or adopted by the

1 governing body of the local unit of government.

2 (e) Bonds or notes issued under this article, and interest
3 payable on such bonds and notes, are exempt from all taxation by
4 this state and its political subdivisions.

5 (f) Bonds or notes issued under this article further essential
6 public and governmental purposes, including, but not limited to,
7 reduced energy costs, reduced greenhouse gas emissions, economic
8 stimulation and development, improved property valuation, and
9 increased employment.

10 **§5B-2I-7. Joint implementation of programs.**

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

16 (b) If a property assessed clean energy program is implemented
17 jointly by two or more local units of government pursuant to
18 subsection (a), a single public hearing held jointly by the
19 cooperating local units of government is sufficient to satisfy the
20 requirements of subdivision (2), subsection (c), section three of
21 this article.

NOTE: The purpose of this bill is to authorize local units of government to adopt property assessed clean energy programs and to create districts to promote the use of renewable energy systems and

energy efficiency improvements by owners of certain real property; to provide for the financing of such programs through voluntary property assessments, commercial lending, and other means; to authorize a local unit of government to issue bonds, notes, and other evidences of indebtedness and to pay the cost of renewable energy systems and energy efficiency improvements from the proceeds thereof; to provide for the repayment of bonds, notes, and other evidences of indebtedness; to authorize certain fees; to prescribe the powers and duties of certain governmental officers and entities; and to provide for remedies.

This article is new; therefore, it has been completely underscored.