

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

832B0222

HOUSE BILL NO. 1090

Introduced by: Representatives Johnson (David), Chase, Finck, Glanzer, McCleerey, and Smith (Jamie) and Senators Rusch, Heinert, Nesiba, Smith (VJ), and Steinhauer

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of commercial property
2 assessed clean energy programs.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

- 6 (1) "Energy improvement," any installation or modification of equipment, device, or
7 materials intended to decrease energy consumption, reduce demand, promote more
8 efficient use of water, electricity, natural gas, propane, or any other form of energy
9 on property that is approved as a utility cost-savings measure by a county;
- 10 (2) "Renewable energy resource," energy and any associated renewable energy credits
11 from wind energy, solar thermal energy, photovoltaic cells and panels, biodiesel,
12 anaerobic digestion, geothermal, and hydropower that does not involve new
13 construction or significant expansion of hydropower dams;
- 14 (3) "Renewable energy system," a fixture, product, device, or interacting group of



1 fixtures, products, or devices on the customer's side of the meter that use one or more
2 renewable energy resources to generate energy including electricity, hot water, and
3 steam.

4 Section 2. That the code be amended by adding a NEW SECTION to read:

5 A county may establish, in accordance with section 3 of this Act, a commercial property
6 assessed clean energy program, to be administered by the county or by a third-party program
7 administrator hired by the county, for any area the county designates within the jurisdictional
8 boundaries of the county for the installation, construction, or modification of an energy
9 improvement project. A county may designate more than one area under the program to be
10 separate, overlapping, or coterminous, and may include the entire area of the county.

11 A county may, by ordinance, authorize a contract between or among the county, an owner
12 of existing or newly constructed property, and a capital provider, which may include a private
13 lender or any other source of funding authorized by the county, governing the terms and
14 conditions of the assessment of the property and the financing of the energy improvement
15 project under the program. The contract shall provide for repayment of the cost of an energy
16 project through an assessment upon the property that is the subject of the contract.

17 The cost of an energy project may include, on a specific or pro rata basis as authorized by
18 the county, any prepayment premium, any materials and labor for installation of the project, any
19 permit fee, inspection fee, application and administrative fee, bank fee, interest reserve, and any
20 other fee charged to the property owner for the installation of the energy project and to the
21 capital provider.

22 Section 3. That the code be amended by adding a NEW SECTION to read:

23 To establish a program under section 2 of this Act, a county commission shall adopt an
24 ordinance that includes:

- 1 (1) A statement of intent to facilitate access to capital to provide funding for energy
2 projects that are repaid by assessments on the property that is the subject of a project;
- 3 (2) A statement designating the source of funding for work performed on a project;
- 4 (3) The types of any energy projects that may be financed under the proposed program;
- 5 (4) A description of the area designated by the county under the proposed program;
- 6 (5) A report on the proposed program in accordance with section 4 of this Act to be
7 incorporated by reference into the ordinance;
- 8 (6) The time and place for any public hearing required for the adoption of the proposed
9 program by ordinance; and
- 10 (7) Any aspect of the proposed program that may be and may not be amended without
11 a public hearing.

12 Section 4. That the code be amended by adding a NEW SECTION to read:

13 The report on a proposed program, as required under section 3 of this Act, shall include:

- 14 (1) Any draft contract governing the terms and conditions of assessment and financing
15 under the proposed program;
- 16 (2) A requirement that the term of an assessment may not exceed the useful life of the
17 energy improvement project funded by the assessment. The county may allow the
18 term of an assessment for any project consisting of multiple energy improvement
19 projects to be no greater than the energy improvement project with the longest useful
20 life;
- 21 (3) A requirement that the ratio of the amount of the assessment to the assessed value of
22 the property or the market value of the property, as determined by an appraisal of the
23 value of the property after completion of the energy improvement project that is no
24 older than twelve months;

- 1 (4) A requirement that a property owner of property that is subject to a mortgage shall
- 2 obtain written consent from any mortgage holder prior to participating in the
- 3 program;
- 4 (5) Any provision to market the program and inform property owners and potential
- 5 capital providers about the program; and
- 6 (6) Any quality assurance and antifraud measure required by the county.

7 Section 5. That the code be amended by adding a NEW SECTION to read:

8 An owner of any privately-owned commercial, industrial, agricultural, or multi-family

9 property, provided the multi-family property includes at least five units, located within an area

10 designated by a county under section 2 of this Act may submit an application, in accordance

11 with procedures established by ordinance by the county, for approval of an energy improvement

12 project.

13 Prior to entering into a contract under section 2 of this Act with a property owner, the county

14 shall verify that:

- 15 (1) The property is within the area designated by the county under section 2 of this Act;
- 16 (2) There are no delinquent taxes, nor any special assessment against or water or sewer
- 17 charge on the property;
- 18 (3) There is no delinquent assessment on the property under the program;
- 19 (4) There is no lien on the property, including any construction or mechanics lien, lis
- 20 pendens, or judgment lien against the property owner, nor any pending environmental
- 21 proceeding or eminent domain proceeding over the property;
- 22 (5) No notice of default or other evidence of property-based debt delinquency has been
- 23 recorded and remains uncured;
- 24 (6) The property owner is current on any mortgage debt on the property, the property

1 owner has not filed for bankruptcy in the preceding two years, and the property is not
2 an asset subject to a current bankruptcy filing;

3 (7) Any work on the energy improvement project that requires a license will be
4 performed by a licensed contractor who agrees to comply with terms and conditions
5 established by the county;

6 (8) Any contractor to be hired for the project signed a written acknowledgement that the
7 capital provider will not authorize final payment to the contractor until the capital
8 provider receives written confirmation from the property owner that the energy
9 improvement was properly installed and works as intended;

10 (9) The amount of the assessment in relation to the greater of the assessed value of the
11 property or the appraised value of the property after completion of the energy
12 improvement project, as determined by a licensed appraiser, does not exceed
13 twenty-five percent; and

14 (10) An estimation, including any projected monetary savings, has been provided for the
15 existing water or energy use compared to the expected water or energy use following
16 completion of the energy improvement project. For any proposed project that is new
17 construction, major rehabilitation, or for which no existing usage data is available,
18 modeling shall be used to ensure the estimated use meets or exceeds any minimum
19 standards required by building code.

20 Section 6. That the code be amended by adding a NEW SECTION to read:

21 At least thirty days prior to entering into a contract under section 2 of this Act with a county,
22 a property owner shall provide to a holder or loan servicer of any mortgage encumbering or
23 otherwise secured by the property, notice of the property owner's intent to enter into the contract
24 with the county. Notice under this section shall include the maximum principal amount to be

1 financed, the maximum annual assessment necessary to repay the amount, and a request that the
2 holder or loan servicer consent to the property owner subjecting the property to the program.
3 The property owner shall provide to the county proof of notice under this section and written
4 consent of any existing holder or loan servicer acknowledging that any mortgage will be
5 subordinate to the contract and that the county may foreclose on the property if the assessment
6 is not paid.

7 Section 7. That the code be amended by adding a NEW SECTION to read:

8 This Act does not limit any home rule authority provided under chapter 6-12.

9 Section 8. That the code be amended by adding a NEW SECTION to read:

10 An assessment imposed under a program established by a county under section 2 of this Act,
11 including any interest on the assessment and any penalty, constitutes a lien against the property
12 on which the assessment is imposed until the assessment, including any interest or penalty, is
13 paid in full and a satisfaction and release is recorded. The lien and summary of the contract shall
14 be recorded with the register of deeds of the county in which the property is located. A lien
15 under this section has the same priority and status as any other property tax and assessment lien.
16 The county has all rights and remedies in the case of default or delinquency in the repayment
17 of an assessment under this section as with delinquent property taxes under chapter 10-22.

18 Notwithstanding any other law, the portion of an assessment under a contract that has not
19 become due is not accelerated or eliminated by foreclosure of a property tax lien. Any
20 installment of an assessment under the program may be included in each tax bill and collected
21 at the same time and in the same manner as property taxes under chapter 10-21 or collected by
22 the capital provider by separate direct billing. Partial payment of an assessment under a program
23 is not permitted.