

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 710

By: Rader

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6 AS INTRODUCED

7 An Act relating to energy and the environment;
8 creating the Property Assessed Clean Energy Act;
9 declaring Legislative findings; defining terms;
10 authorizing creation of energy and resilience
11 assessment districts; establishing rules for creation
12 and governance; requiring certain public hearing and
13 notice; requiring resolution for creation; providing
14 terms of resolution; authorizing certain contract
15 with qualifying property owner and third-party
16 lender; specifying costs to be financed with third-
17 party; requiring repayment schedule in certain
18 contract; prohibiting county from imposing fee under
19 certain circumstances; requiring county to verify
20 certain information before entering into contract;
21 requiring qualifying property owner to provide
22 certain information; providing limitations for
23 assessments levied against qualifying property;
24 construing language; providing terms of certain
assessment and collection; requiring certain
notification for late assessment; authorizing
assessment collections only from certain persons;
declaring late payment of certain assessment a lien
on property; providing terms of lien; requiring
certain filing for lien; providing required elements
of filing; establishing procedure for termination of
lien; authorizing certain persons to increase certain
monthly payments in event of lien; authorizing county
to raise certain monies; providing terms of certain
bonds issued by county; limiting bond amount except
in certain circumstances; establishing certain
statutory lien; exempting certain bonds from
taxation; authorizing county to create debt service
reserve fund; authorizing two or more counties to
form and govern energy conservation and resilience
assessment district; authorizing county to contract

1 with third-party for administration of district;
2 authorizing single hearing and notice in certain
3 circumstances; requiring certain report; providing
4 for codification; and declaring an emergency.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2260 of Title 27A, unless there
8 is created a duplication in numbering, reads as follows:

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

11 SECTION 2. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2261 of Title 27A, unless there
13 is created a duplication in numbering, reads as follows:

14 The Legislature finds that:

15 1. Energy and water efficiency and the use of renewable
16 energy and increasing building resiliency to storm damage are
17 important for preserving the health and economic well-being of
18 Oklahoma's citizens. Using less energy decreases the cost of
19 living and keeps the cost of public power low by delaying the
20 need for additional power plants. Using less water helps the
21 state respond to drought conditions. Increasing building
22 resilience protects businesses from the devastating economic and
23 physical impact of storms. By building the market for energy and
24 water efficiency and renewable energy products, and increasing

1 building resiliency, economic development will be encouraged, new
2 jobs will be created for Oklahomans in the energy and water
3 efficiency and renewable job sectors;

4 2. To further these goals, and as an economic development
5 initiative, the state should promote energy and water efficiency
6 improvements and renewable energy systems and building
7 resiliency;

8 3. The upfront costs for energy and water efficiency
9 improvements and renewable energy systems and building resilience
10 prohibit many property owners from making improvements.

11 Therefore, it is necessary to authorize counties to implement an
12 alternative financing method through the creation of energy
13 conservation and resilience assessment districts; and

14 4. A public purpose will be served by providing counties
15 with the authority to provide for or arrange for third-party
16 lenders to finance the installation of energy and water
17 efficiency improvements and renewable energy systems and building
18 resilience through the creation of energy conservation and
19 resilience assessment districts.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2262 of Title 27A, unless there
22 is created a duplication in numbering, reads as follows:

23 For the purposes of this act:
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1 1. "Assessment contract" means a contract entered into between
2 a county and a property owner, under which the county agrees to
3 provide or arrange financing, including, if applicable, from a
4 third-party capital provider, for an energy, water or resiliency
5 project in exchange for a property owner's agreement to pay an
6 annual assessment for a period not to exceed the weighted average
7 useful life of the energy, water or resiliency project;

8 2. "County" means any county in this state;

9 3. "Energy and resiliency assessment district" means a
10 district created by a county to provide financing for energy,
11 water or resiliency projects;

12 4. "Energy efficiency related item" means any repair,
13 replacement, improvement or modification to real property that is
14 necessary or desirable in conjunction with an energy efficiency
15 improvement, including but not limited to structural support
16 improvements and the repair replacement of any building
17 components, paved surfaces or fixtures disrupted or altered by
18 the installation of an energy efficiency improvement;

19 5. "Energy or water efficiency or resiliency improvement"
20 means any acquisition, installation or modification planned or in
21 place, provided that the remaining weighted average useful life of
22 the acquisition, installation or modification in place at the time
23 the application for financing the energy, water or resiliency
24 project is submitted to the district is at least ten (10) years,

1 benefiting publicly or privately owned property that is designed
2 to reduce the electric, gas, water, or other utility demand or
3 consumption or increase the resiliency to storm or wind damage of
4 the buildings on or to be constructed on such property, or to
5 promote the efficient and effective management of natural
6 resources or storm water, including, but not limited to:

- 7 a. insulation in walls, roofs, floors, foundations or
8 heating and cooling distribution systems,
- 9 b. storm windows and doors, multi glazed windows and
10 doors, heat-absorbing or heat-reflective glazed and
11 coated window and door systems and additional
12 glazing, reductions in glass area and other window
13 and door system modifications that reduce energy
14 consumption,
- 15 c. automated energy control systems,
- 16 d. heating, ventilating, or air conditioning and
17 distribution system modifications or replacements,
- 18 e. caulking, weather stripping, and air sealing,
- 19 f. replacement or modification of lighting fixtures to
20 reduce the energy use of the lighting system,
- 21 g. energy recovery systems,
- 22 h. daylighting systems,

- i. installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity,
- j. facilities providing for water conservation or pollutant control,
- k. roofs designed to reduce energy consumption or support additional loads necessitated by other energy efficiency improvements,
- l. installation of energy-efficient fixtures, including, but not limited to, water heating systems, escalators and elevators,
- m. energy efficiency related items so long as the cost of the energy efficiency related items financed does not exceed twenty-five percent (25%) of the total cost of the energy project energy, water or resiliency project, and
- n. any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the municipality;

6. "Energy or water project" means the installation or modification of an energy efficiency improvement or the acquisition, installation or improvement of a renewable energy system;

1 7. "Qualifying property" means any of the following type of
2 commercial property, existing or new, located within a county:

- 3 a. agricultural property,
- 4 b. commercial property, including multifamily
5 residential property comprised of more than four (4)
6 dwelling units, or
- 7 c. industrial property;

8 8. "Renewable energy resource" means a resource that
9 naturally replenishes over time and minimizes the output of toxic
10 material in the conversion to energy. Renewable energy resource
11 includes, but is not limited to, the following:

- 12 a. nonhazardous biomass,
- 13 b. solar and solar thermal energy,
- 14 c. wind energy,
- 15 d. geothermal energy,
- 16 e. methane gas captured from a landfill or elsewhere,
- 17 f. photovoltaic systems, and
- 18 g. cogeneration and trigeneration systems.

19 It does not include petroleum, nuclear power, natural gas,
20 coal or hazardous biomass;

21 9. "Renewable energy system" means a fixture, product,
22 device or interacting group of fixtures, products or devices on
23 the customer's side of the meter that uses one or more renewable
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1 energy resources to generate electricity. It includes a biomass
2 stove but does not include an incinerator;

3 10. "Resiliency improvement" means any repair, replacement,
4 improvement or modification of real property, planned or in
5 place, which will increase its resistance to storm or wind
6 damage. Resiliency improvements may be based on, but are not
7 limited to, the FORTIFIED standard developed by the Insurance
8 Institute for Building and Home Safety; and

9 11. "Resiliency project" means the installation or
10 modification of resiliency improvements.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2263 of Title 27A, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Pursuant to the procedures provided in this section, a
15 county may create one or more energy and resilience assessment
16 districts. Such districts may be separate, overlapping or
17 coterminous and may be created anywhere within the county or its
18 extraterritorial zoning jurisdiction. The governing body of the
19 county shall be the governing body for any district so created.

20 B. Prior to creating any energy or resilience assessment
21 district, the county shall hold a public hearing at which the public
22 may comment on the creation of the district. Notice of the public
23 hearing shall be given by publication in a legal newspaper in or of
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1 general circulation in the county at least ten (10) days prior to
2 the hearing.

3 C. After the public hearing, the county may create an energy
4 and resilience assessment district by resolution. The resolution
5 shall include:

6 1. A finding that the financing of energy, water or resiliency
7 projects is a valid public purpose;

8 2. A contract form to be used for assessment contracts between
9 the county, the owner of the qualifying property specifying the
10 acceptance of financing and obligation to repay through annual
11 assessments;

12 3. A finding that the county will utilize third-party capital
13 providers, and the terms and conditions under which they may
14 qualify, to offer financing that will be repaid through the annual
15 assessments authorized under this section;

16 4. Identification of an official authorized to enter into
17 assessment contracts on behalf of the county;

18 5. An application process and eligibility requirements for
19 financing energy, water or resiliency projects;

20 6. An explanation of how annual assessments shall be made and
21 collected;

22 7. Information regarding the following, to the extent known, or
23 procedures to determine the following:

1 a. any application, administration or other program fees
2 to be charged to owners participating in the program
3 that will be used to finance costs incurred by the
4 municipality as a result of the program, and

5 b. the county may retain the necessary administrative and
6 programs services to implement the program through a
7 qualified third-party organization;

8 8. A requirement that the term of the annual assessments not
9 exceed the weighted average useful life of the energy, water or
10 resiliency project paid for by the annual assessments;

11 9. A requirement that any energy efficiency improvement that is
12 not permanently affixed to the qualifying property upon which an
13 annual assessment is imposed to repay the cost of such energy
14 efficiency improvement must be conveyed with the qualifying property
15 if a transfer of ownership of the qualifying property occurs;

16 10. A requirement that prior to the effective date of any
17 contract that binds the purchaser to purchase qualifying property
18 upon which an annual assessment is imposed, the owner shall provide
19 notice to the purchaser that the purchaser assumes responsibility
20 for payment of the annual assessment;

21 11. Provisions for marketing and participant education; and

22 12. A requirement that the county shall obtain verification
23 that the renewable energy system or energy efficiency improvement
24 was property installed and is operating as intended.

1 SECTION 5. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 2264 of Title 27A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. After passage of a resolution under Section 4 of this act, a
5 county may enter into an assessment contract with the record owner
6 of a qualifying commercial property within a clean energy assessment
7 district and, if applicable, with a third-party lender to finance an
8 energy water or resiliency project on the qualifying property. The
9 costs financed under the assessment contract may include the cost of
10 materials and labor necessary for installation, permit fees,
11 inspection fees, application and administrative fees, bank fees and
12 all other fees incurred by the owner pursuant to the installation.
13 The assessment contract shall provide for the repayment of all such
14 costs through annual assessments upon the qualifying property
15 benefited by the energy, water or resiliency project. A county may
16 not impose an annual assessment under this act unless such annual
17 assessment is part of an assessment contract entered into under this
18 section.

19 B. Before entering into an assessment contract with an owner
20 and, if applicable, a third-party lender under this section, the
21 county shall verify that:

22 1. The owner has obtained an acknowledged and verified written
23 consent and subordination agreement executed by each mortgage holder
24 or trust deed beneficiary stating that the mortgagee or beneficiary

1 consents to the imposition of the annual assessment and that the
2 priority of the mortgage or trust deed is subordinated to the lien.
3 The consent and subordination agreement shall be in a form and
4 substance acceptable to each mortgagee or beneficiary and shall be
5 recorded in the office of the county clerk of deeds of the county in
6 which the qualifying property is located;

7 2. That there are no delinquent taxes, special assessments or
8 any other assessments levied on the qualifying property and that
9 there are no involuntary liens including but not limited to
10 construction liens, on the qualifying property;

11 3. That the owner of the qualifying property is current on all
12 debt secured by a mortgage or trust deed encumbering or otherwise
13 securing the qualifying property;

14 4. There are no delinquent annual assessments on the qualifying
15 property which were imposed to pay for a different energy or
16 resiliency project under this act;

17 5. There are sufficient resources to complete the energy, water
18 or resiliency project and that the energy, water or resiliency
19 project creates an estimated economic benefit including but not
20 limited to energy and water cost savings, maintenance cost savings,
21 insurance savings, other property operating savings and any other
22 direct or indirect economic benefit expected from the energy, water
23 or resiliency project during the financing period. The estimated
24 economic benefit may be derived from federal, state or third-party

1 engineer certifications or standards of energy or water savings
2 associated with a particular energy or water efficiency improvement
3 or a set of energy or water efficiency improvements.

4 C. Upon completion of the verifications required under
5 subsection B of this section, an assessment contract may be executed
6 by the county and the owner of the qualifying property and shall
7 provide:

8 1. A description of the energy, water or resiliency project,
9 including the estimated cost of the project and a description of the
10 estimated savings prepared in accordance with standards acceptable
11 to the county;

12 2. A mechanism for:

13 a. verifying the final costs of the energy, water and
14 resiliency project upon its completion, and

15 b. ensuring that any amounts advanced, financed or
16 otherwise paid by the county towards the costs of the
17 energy, water or resiliency project will not exceed
18 the final cost of the project;

19 3. An agreement by the property owner to pay annual assessments
20 for a period not to exceed the weighted average useful life of the
21 energy, water and resiliency project;

22 4. A statement that the obligations set forth in the assessment
23 contract, including the obligation to pay annual assessments, are a
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1 covenant that shall run with the land and be obligations upon future
2 owners of the qualifying property; and

3 5. An acknowledgement that no subdivision of qualifying
4 property subject to the assessment contract shall be valid unless
5 the assessment contract or an amendment to such contract divides the
6 total annual assessment due between the newly subdivided parcels pro
7 rata to the special benefit realized by each subdivided parcel.

8 D. The total annual assessments levied against qualifying
9 property under an assessment contract shall not exceed the sum of
10 the cost of the energy, water or resiliency project, including any
11 energy audits or inspections or portion thereof financed, plus such
12 administration fees, interest and other financing costs reasonably
13 required by the county.

14 E. Nothing in this act shall be construed to prevent a county
15 from entering into more than one assessment contract with respect to
16 a single parcel of real property so long as each assessment contract
17 relates to a separate energy, water or resiliency project.

18 F. Annual assessments agreed to under an assessment contract
19 shall be levied against the qualifying property and collected at the
20 same time and in the same manner as property taxes are levied and
21 collected, except that an assessment contract may allow third-party
22 lenders to collect annual assessments directly from the owner of the
23 qualifying property in a manner prescribed in the assessment
24 contract. Any third-party lender collecting annual assessments

1 directly from the owner of the qualifying property shall notify the
2 county within three (3) business days if an annual assessment
3 becomes delinquent.

4 G. Collection of annual assessments shall only be sought from
5 the original owners or subsequent purchasers of qualifying property,
6 subject to an assessment contract.

7 SECTION 6. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 2265 of Title 27A, unless there
9 is created a duplication in numbering, reads as follows:

10 A. For qualifying property, any annual assessment imposed on
11 such qualifying property that becomes delinquent, including any
12 interest on the annual assessment and any penalty, are hereby
13 declared to be a lien against the property so assessed from the date
14 of recordation of the assessment contract, coequal with the lien of
15 other taxes and prior and superior to all other liens against such
16 lots or tracts of land. The lien shall continue as to unpaid
17 installments and interest until the assessments and interest thereon
18 shall be fully paid. Any annual assessment that is not paid within
19 the time period set forth in the assessment contract shall be
20 considered delinquent.

21 B. For every qualifying property with an executed assessment
22 contract, the county shall file a notice of lien filed under this
23 section which shall, at a minimum, include:
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1 1. The amount of funds disbursed or to be disbursed pursuant to
2 the assessment contract;

3 2. The names and addresses of the current owners of the
4 qualifying property subject to the annual assessment;

5 3. The legal description of the qualifying property subject to
6 the annual assessment;

7 4. The duration of the assessment contract; and

8 5. The name of the county filing the notice of lien.

9 C. The lien created by this section shall:

10 1. Have the same priority and status as real property tax
11 liens, provided that the qualifying property obtains and records an
12 executed consent and subordination agreement;

13 2. Run with the qualifying property upon transfer of ownership,
14 including a sale pursuant to a foreclosure or a sale pursuant to the
15 exercise of a power of sale under a trust deed. This shall also
16 include the obligation to pay annual assessments; and

17 3. Not be extinguished by virtue of a sale by the county for
18 delinquent property taxes.

19 D. For qualifying property, when the assessment is paid in
20 full, a release of the lien shall be recorded in the office of the
21 county clerk of the county in which the notice of the lien was
22 recorded.

23 E. If the holder or loan servicer of any existing mortgage or
24 trust deed that encumbers or that is otherwise secured by the
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1 qualifying property has established a payment schedule or escrow
2 account to accrue property taxes or insurance, such holder or loan
3 servicer may increase the required monthly payment, if any, by an
4 amount necessary to pay the annual assessment imposed under this
5 act.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2266 of Title 27A, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A county may raise capital to finance energy, water or
10 resiliency projects undertaken pursuant to an assessment contract
11 entered into under this act. Such capital may come from the sale of
12 bonds, amounts to be advanced by the county through funds available
13 to it from any other sources or third-party capital providers.

14 B. Bonds issued under subsection A of this section shall not be
15 general obligations of the county, shall be nonrecourse and shall
16 not be backed by the full faith and credit of the issuer, the county
17 or the state, but shall only be secured by payments of annual
18 assessments by owners of qualifying property within the clean energy
19 assessment district or districts specified who are subject to an
20 assessment contract.

21 C. Any single bond issuance by a county for purposes of this
22 act shall not exceed Ten Million Dollars (\$10,000,000.00) without a
23 vote of the registered voters of such county.

1 D. A pledge of annual assessments, funds or contractual rights
2 made in connection with the issuance of bonds by a county
3 constitutes a statutory lien on the annual assessments, funds or
4 contractual rights so pledged in favor of the person or persons to
5 whom the pledge is given without further action by the county. The
6 statutory lien is valid and binding against all other persons, with
7 or without notice.

8 E. Bonds of one series issued under this act may be secured on
9 a parity with bonds of another series issued by the county pursuant
10 to the terms of the master indenture or master resolution entered
11 into or adopted by the county.

12 F. Bonds issued under the act, and interest payable on such
13 bonds, are exempt from all taxation by this state and its political
14 subdivisions.

15 G. A county that has created a clean energy assessment district
16 may create a debt service reserve fund to be used as security for
17 capital raised.

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 2267 of Title 27A, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Two or more counties or a county and a municipality may
22 enter into an agreement pursuant to the Interlocal Cooperation Act,
23 Section 1001 et seq. of Title 74 of the Oklahoma Statutes, for the
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1 creation, administration or creation and administration of energy
2 conservation and resilience assessment districts.

3 B. If the creation of energy conservation and resilience
4 assessment districts is implemented jointly by two or more counties
5 or a county and a municipality, a single public hearing held jointly
6 by the cooperating political subdivisions is sufficient to satisfy
7 the requirements.

8 C. A county may contract with a third-party for the
9 administration of energy conservation and resilience assessment
10 districts.

11 SECTION 9. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 2268 of Title 27A, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Any county that creates a district under this act, on or
15 before January 31 of each year, shall prepare a report on the
16 following:

17 1. The number of assessment districts in the county and their
18 location;

19 2. The total dollar amount of energy, water or resiliency
20 projects undertaken pursuant to the act;

21 3. The total dollar amount of outstanding bonds issued under
22 the act;

23 4. The total dollar amount of annual assessments collected as
24 of the end of the most recently completed calendar year and the

1 total amount of annual assessments yet to be collected pursuant to
2 assessment contracts signed under this act; and

3 5. A description of the types of energy, water or resiliency
4 projects undertaken pursuant to this act.

5 B. If an energy conservation and resilience assessment district
6 is administered jointly by two or more political subdivisions, a
7 single report submission by the cooperating political subdivisions
8 is sufficient to satisfy the requirements of this section.

9 SECTION 10. It being immediately necessary for the preservation
10 of the public peace, health or safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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