

2011 DRAFTING REQUEST

Bill

Received: **01/05/2012**

Received By: **emueller**

Wanted: **As time permits**

Companion to LRB: **-3972**

For: **Robert Cowles (608) 266-0484**

By/Representing: **Ryan Smith**

May Contact: **Ray Carey (608-220-6461)**

Drafter: **emueller**

Subject: **Local Gov't - munis generally
Local Gov't - counties**

Addl. Drafters:

Extra Copies: **MES**

Submit via email: **YES**

Requester's email: **Sen.Cowles@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Property assessed clean energy.

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 01/26/2012	kfollett 01/27/2012		_____			Local
/P1			jmurphy 01/27/2012	_____	ggodwin 01/27/2012		Local
/1	emueller 01/30/2012	kfollett 02/01/2012	phenry 02/01/2012	_____	sbasford 02/01/2012	lparisi 02/01/2012	

FE Sent For:

at intro

2-3-12

<END>

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/P1			jmurphy 01/27/2012	_____	ggodwin 01/27/2012		Local
/1	emueller 01/30/2012	kfollett 02/01/2012	phenry 02/01/2012	_____	sbasford 02/01/2012		

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/?	emueller 01/26/2012	kfollett 01/27/2012	<i>J/ph</i>	_____	_____	_____	Local
/P1		<i>llf</i>	jmurphy	<i>ph/ps</i>	ggodwin	_____	
/1	<i>Evm</i> 1/30/12	<i>2/1</i>	01/27/2012	_____	01/27/2012	_____	

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	emueller	1/16/12					
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1/1	EVM 1/26/12	1/27	1/27	1/27			
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FE Sent For:

<END>

Mueller, Eric

From: Smith, Ryan
Sent: Thursday, January 05, 2012 10:49 AM
To: Mueller, Eric
Subject: Cowles Drafting Request - Energy Efficiency Loans
Attachments: An Act to renumber and amend 66.0627.doc

Eric,

Here's the language that I spoke to you about this morning. The P-draft that you did earlier was LRB 2462. Feel free to call Ray Carey (608-220-6461) or myself with any questions. Ray has included some notes (below) with the drafting instructions (attached).

Thanks again,

Ryan Smith
Chief of Staff
Office of Senator Cowles
800-334-1465

-----Original Message-----

From: Carey, Raymond R. (Madison) [<mailto:RCarey@foley.com>]
Sent: Wednesday, January 04, 2012 3:11 PM
To: Smith, Ryan
Subject: PACE

SECTION 1:

This language is current law and authorizes the PACE program. The LRB drafter suggested some technical, non-substantive changes. Those changes are indicated with the underlined text.

SECTION 2:

This paragraph would be all new language to the existing law. It has been modified based on recent conversations with multiple parties. This language does three things. First, it allows, but does not require, 3rd party institutions that provide financing for an energy efficiency project to collect special charge installment payments (rather than the local government itself). Second, it states that a delinquent installment payment due under a special charge becomes a lien on the property. We have removed language from this draft that applies the lien for the whole amount when the special charge is first made. The language in this draft is very similar to how special charge liens apply under current law (upon delinquency), but clarifies that such delinquency may occur with a delinquent installment payment. Finally, this paragraph states that a special charge lien has the same priority as a special assessment lien.

The purpose of this paragraph is to make minor fixes to current law in order to provide more flexibility for local governments when they create their PACE programs. For example, the City of Milwaukee is unlikely to loan money directly as part of their program; rather, it will pass an ordinance whereby they enter into agreements with property owners who will seek out their own contractors and financing. One of the changes in this section explicitly authorizes a local government to permit a 3rd party providing financing to collect the installment payments due under the special charge. Also, because current law applies a lien when a special charge is delinquent, we need to clarify that a lien only attaches for the amount of a delinquent installment payment (installment payments are not typically allowed for special charges, but current law makes an exception for energy efficiency charges, but is silent on how to treat delinquencies). We have removed language that would apply a lien for the full amount when the charge is first made. This should greatly diminish any objections from the banks, to the extent there were any.

SECTION 3:

This paragraph is all new language to the existing law. The paragraph states that the local government shall require the owner to obtain a written performance guarantee from the contractor or engineer for projects over \$250,000. The contractor

or engineer must promise that the money spent on the project will be recouped through energy savings. This paragraph also states that the local government may determine the method of verification that will be used with the guarantee.

This language is meant to ensure the integrity of the program and sync it up with current practice in the industry. Requiring a performance guarantee for large projects encourages doubters to spend the money to make their property energy efficient and it also weeds out bad actors.

It is the model that has been used successfully by the State of Wisconsin to retrofit hundreds of buildings over the last 20 years with proven and substantial payback.

SECTION 4:

This paragraph is all new language to the existing law. This paragraph states that for projects under \$250,000, the local government may require a 3rd party technical review of the projected savings from the project (but the local government is not required to seek the review).

SECTION 5:

This language indicates that the changes to the law will apply to loans or agreements entered into after the effective date of the new law (which will be shortly after the Governor signs it).

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

SECTION 1. 66.0627 (8) of the statutes is renumbered 66.0627 (8) (a) and amended to read:

66.0627 (8) (a) A political subdivision may make a loan, or enter into an agreement regarding loan repayments to a 3rd party for owner-arranged or lessee-arranged financing, to an owner or lessee of a premises located in the political subdivision for making or installing an energy efficiency improvement, a water efficiency improvement, or a renewable resource application to the premises; ~~or enter into an agreement with the owner or lessee regarding loan repayments to a 3rd party for owner-arranged or lessee-arranged financing for such purposes.~~ If a political subdivision makes ~~such~~ a loan or enters into ~~such~~ an agreement under this paragraph, the political subdivision may collect the loan repayment as a special charge under this section. Notwithstanding ~~the provisions of sub. (4),~~ a special charge imposed under this ~~subsection~~ paragraph may be collected in installments and may be included in the current or next tax roll for collection and settlement under ch. 74 even if the special charge is not delinquent.

SECTION 2. 66.0627 (8) (b) of the statutes is created to read:

66.0627 (8) (b) A political subdivision that imposes a special charge under par. (a) may allow special charge installments to be collected by a 3rd party that has provided financing for the improvement or application and may require the 3rd party to inform the political subdivision if a special charge installment is delinquent. A delinquent installment payment authorized under par (a) becomes a lien on the property that benefits from the improvement or application. A special charge lien under this paragraph has the same priority as a special assessment lien.

SECTION 3. 66.0627 (8) (c) of the statutes is created to read:

66.0627 (8) (c) A political subdivision that makes a loan to or enters into an agreement with an owner to fund an improvement or application under par. (a) which costs \$250,000 or

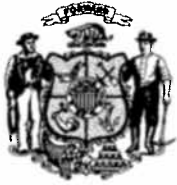
more shall require the owner to obtain a written guarantee from the contractor or engineer that the improvement or application will achieve a savings-to-investment ratio of greater than 1.0 and shall agree to annually pay the owner any shortfall in savings below this level. The political subdivision may determine the method of measurement and verification associated with the guarantee.

SECTION 4. 66.0627 (8) (d) of the statutes is created to read:

66.0627 (8) (d) If the making or installing of an improvement or application under par. (a) costs less than \$250,000, the political subdivision may require a 3rd party technical review of the projected savings of the improvement or application as a condition of making a loan or entering into an agreement under par. (a).

SECTION 5. Initial applicability.

(1) This act first applies to loans made or agreements entered into on the effective date of this subsection.



DNote

State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-2462/PT
EVM:sbb&kjf:jf

3731/6

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

RMNR

INSERT

In 1/26/12

for
1/27

regen

1 AN ACT *to renumber and amend* 66.0627 (8); and *to create* 66.0627 (8) (b),
2 66.0627 (8) (c) and 66.0627 (8) (d) of the statutes; **relating to:** loans and
3 repayment assistance by a political subdivision for energy and water
4 improvements to premises and collection of the debt by special charge.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

INS-Analysis

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 66.0627 (8) of the statutes is renumbered 66.0627 (8) (a) and
6 amended to read:

7 66.0627 (8) (a) A political subdivision may make a loan, or enter into an
8 agreement regarding loan repayments to a 3rd party for owner-arranged or
9 lessee-arranged financing, to an owner or lessee of a premises located in the political

1 subdivision for making or installing an energy efficiency improvement, a water
2 efficiency improvement, or a renewable resource application to the premises, ~~or enter~~
3 ~~into an agreement with the owner or lessee regarding loan repayments to a 3rd party~~
4 ~~for owner-arranged or lessee-arranged financing for such purposes.~~ If a political
5 subdivision makes ~~such~~ a loan or enters into ~~such~~ an agreement under this
6 paragraph, the political subdivision may collect the loan repayment as a special
7 charge under this section. Notwithstanding ~~the provisions of sub. (4),~~ a special
8 charge imposed under this ~~subsection~~ paragraph may be collected in installments
9 and may be included in the current or next tax roll for collection and settlement under
10 ch. 74 even if the special charge is not delinquent.

11 SECTION 2. 66.0627 (8) (b) of the statutes is created to read:

12 66.0627 (8) (b) If the making or installing of an improvement or application
13 under par. (a) costs \$250,000 or more; the loan is to, or the agreement is with, the
14 owner of the premises; and a special charge is imposed under par. (a), all of the
15 following apply:

16 1. The political subdivision may create a lien upon the premises for the entire
17 amount of the loan or agreement. The lien may be created on the date the special
18 charge is imposed and, if created, shall continue until the full amount, including any
19 interest and penalties, of the loan or agreement is paid. If a lien is created under this
20 subdivision, notice of the special charge and a schedule of the special charge
21 installments shall be recorded in the office of the clerk of the political subdivision as
22 soon as practicable. A special charge lien created under this subdivision has the
23 same priority as other special charge liens.

1 2. The governing body of the political subdivision may provide that the due date
2 for the full amount of the special charge will be accelerated if any special charge
3 installment is delinquent.

4 ~~no #~~ 3. ^A The political subdivision ^{that imposes a special charge under par. (a)} may permit special charge installments to be
5 collected by a 3rd party that has provided financing for the improvement or
6 application and may require that the 3rd party inform the political subdivision if a
7 special charge installment is delinquent.

8 SECTION 3. 66.0627 (8) ^d of the statutes is created to read:

9 66.0627 (8) ^d ~~If the making or installing of an improvement or application~~
10 ~~under par. (a) costs \$250,000 or more and the loan is made to, or the agreement~~
11 ~~entered with, the owner of a premises, the contractor shall provide the owner with~~ ^{shall require}
12 ~~a guarantee in the contract for the making or installing of the improvement or~~ ^{written}
13 ~~application that the making or installing of the improvement or application will~~ ^{from the contractor or project engineer}
14 achieve a savings-to-investment ratio of greater than 1.0 and shall agree to
15 annually pay the owner any shortfall in savings below this level.

16 SECTION 4. 66.0627 (8) ^e of the statutes is created to read:

17 66.0627 (8) ^e If the making or installing of an improvement or application
18 under par. (a) costs less than \$250,000, the political subdivision may require a 3rd
19 party technical review of the projected savings of the ~~making or installation of the~~
20 improvement or application as a condition of making a loan or entering into an
21 agreement under par. (a).

22 SECTION 5. Initial applicability.

23 (1) This act first applies to loans made or agreements entered into on the
24 effective date of this subsection.

25 (END)

^{to obtain} A political subdivision that, under par. (a), makes
a loan to, or enters an agreement with, an
owner for making or installing

The political subdivision may
determine the method by which a
guarantee under this paragraph is
enforced.

NOTE

1 INS-Analysis

Under current law, a city, village, or town may impose a special charge against real property for services rendered by allocating the cost of the service to the properties that are served. Generally, a special charge is not payable in installments. Also under current law, a city, village, town, or county (political subdivision) may make a loan to, or enter into a loan repayment agreement with, an owner or lessee of a premises for making or installing certain energy or water efficiency improvements (property assessed clean energy or PACE program). The political subdivision may collect a loan repayment under the PACE program as a special charge. A special charge imposed under the PACE program may be collected in installments.

Under this bill, a political subdivision that imposes a special charge under the PACE program and allows the charge to be paid in installments may allow a 3rd party that has provided financing for the energy or water efficiency improvement to collect the installments. Also under this bill, a delinquent PACE program special charge installment becomes a lien on the property that benefits from the energy or water efficiency improvement funded under the PACE program. Also under this bill, if the political subdivision funds a PACE program project that costs \$250,000 or more, the political subdivision must require the owner of the premises to obtain a written guarantee from the contractor or project engineer that the PACE program project will achieve a savings-to-investment ratio greater than 1.0 or that the contractor or engineer will pay the owner any shortfall in savings. For a PACE program project that costs less than \$250,000, a political subdivision may require a 3rd party technical review of the projected savings before making a PACE program loan or agreement.

third -

third

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

2

3 INS 3-8

4

5 **SECTION 1.** 66.0627 (8) (c) of the statutes is created to read:

6 66.0627 (8) (c) An installment payment authorized under par. (a) that is
7 delinquent becomes a lien on the property that benefits from the improvement or
8 application as of the date of delinquency. A lien under this paragraph has the same
9 priority as a special assessment lien.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3731/?dn
EVM:...

PI
KF

Date

ATTN: Ryan Smith

Please review the attached draft carefully to ensure that it is consistent with your intent. The following are several issues you may wish to consider in your review of this draft.

X 1. I separated the lien material into its own paragraph because the material appears to apply to all special charge installment payments not just to those made to 3rd party collectors. Please let me know if this is not what you intend. Also, this draft specifies the time at which a delinquent installment becomes a lien. The time is the same as is provided for other special charge delinquencies in s. 66.0627 (4), stats. Please let me know if this is not what you want. Do you wish to specify when an installment is delinquent? If not, I would assume that time of delinquency would be subject to local ordinance or contractual provision.

2. I specified that the engineer from whom a guarantee may be obtained is the project engineer. See s. 66.0627 (8) (d), as created by this draft. Please let me know if this is not what you intend.

3. I followed the provided text for s. 66.0627 (8) (e), as created by this draft. Should the language instead parallel s. 66.0627 (8) (d), as created by this draft?

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

third-

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3731/P1dn
EVM:kjf:jm

January 27, 2012

ATTN: Ryan Smith

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1. I separated the lien material into its own paragraph because the material appears to apply to all special charge installment payments not just to those made to third party collectors. Please let me know if this is not what you intend. Also, this draft specifies the time at which a delinquent installment becomes a lien. The time is the same as is provided for other special charge delinquencies in s. 66.0627 (4), stats. Please let me know if this is not what you want. Do you wish to specify when an installment is delinquent? If not, I would assume that time of delinquency would be subject to local ordinance or contractual provision.
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Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Eric V. Mueller
Legislative Attorney
Phone: (608) 261-7032
E-mail: eric.mueller@legis.wisconsin.gov

Mueller, Eric

From: Smith, Ryan
Sent: Monday, January 30, 2012 1:15 PM
To: Mueller, Eric
Subject: FW: Draft review: LRB 11-3731/P1 Topic: Property assessed clean energy.
Attachments: LRB-3731_P1; LRB-3731_P1 Drafters_Note

Eric,

The draft looks good as-is, and an introducible version would be great.

Thanks,

Ryan

From: Sen.Cowles
Sent: Monday, January 30, 2012 9:52 AM
To: Smith, Ryan
Subject: FW: Draft review: LRB 11-3731/P1 Topic: Property assessed clean energy.

From: LRB.Legal
Sent: Friday, January 27, 2012 11:13 AM
To: Sen.Cowles
Subject: Draft review: LRB 11-3731/P1 Topic: Property assessed clean energy.

Following is the PDF version of draft LRB 11-3731/P1 and drafter's note.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3731/P1
EVM:sbb&kjf:jm

Stays
PMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

In 1/30/12

Today
2/1

Resen

1 AN ACT to renumber and amend 66.0627 (8); and to create 66.0627 (8) (b),
2 66.0627 (8) (c), 66.0627 (8) (d) and 66.0627 (8) (e) of the statutes; relating to:
3 loans and repayment assistance by a political subdivision for energy and water
4 improvements to premises and collection of the debt by special charge.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, or town may impose a special charge against real property for services rendered by allocating the cost of the service to the properties that are served. Generally, a special charge is not payable in installments. Also under current law, a city, village, town, or county (political subdivision) may make a loan to, or enter into a loan repayment agreement with, an owner or lessee of a premises for making or installing certain energy or water efficiency improvements (property assessed clean energy or PACE program). The political subdivision may collect a loan repayment under the PACE program as a special charge. A special charge imposed under the PACE program may be collected in installments.

Under this bill, a political subdivision that imposes a special charge under the PACE program and allows the charge to be paid in installments may allow a third party that has provided financing for the energy or water efficiency improvement to collect the installments. Also under this bill, a delinquent PACE program special charge installment becomes a lien on the property that benefits from the energy or water efficiency improvement funded under the PACE program. Also under this bill, if the political subdivision funds a PACE program project that costs \$250,000 or

PACE project
PACE program project

more, the political subdivision must require the owner of the premises to obtain a written guarantee from the contractor or project engineer that the PACE program project will achieve a savings-to-investment ratio greater than 1.0 or that the contractor or engineer will pay the owner any shortfall in savings. For a PACE program project that costs less than \$250,000, a political subdivision may require a third party technical review of the projected savings before making a PACE program loan or agreement.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0627 (8) of the statutes is renumbered 66.0627 (8) (a) and
2 amended to read:

3 66.0627 (8) (a) A political subdivision may make a loan, or enter into an
4 agreement regarding loan repayments to a 3rd party for owner-arranged or
5 lessee-arranged financing, to an owner or lessee of a premises located in the political
6 subdivision for making or installing an energy efficiency improvement, a water
7 efficiency improvement, or a renewable resource application to the premises, ~~or enter~~
8 ~~into an agreement with the owner or lessee regarding loan repayments to a 3rd party~~
9 ~~for owner-arranged or lessee-arranged financing for such purposes.~~ If a political
10 subdivision makes ~~such~~ a loan or enters into ~~such~~ an agreement under this
11 paragraph, the political subdivision may collect the loan repayment as a special
12 charge under this section. Notwithstanding ~~the provisions of~~ sub. (4), a special
13 charge imposed under this ~~subsection~~ paragraph may be collected in installments
14 and may be included in the current or next tax roll for collection and settlement under
15 ch. 74 even if the special charge is not delinquent.

16 **SECTION 2.** 66.0627 (8) (b) of the statutes is created to read:

1 66.0627 (8) (b) A political subdivision that imposes a special charge under par.
2 (a) may permit special charge installments to be collected by a 3rd party that has
3 provided financing for the improvement or application and may require that the 3rd
4 party inform the political subdivision if a special charge installment is delinquent.

5 **SECTION 3.** 66.0627 (8) (c) of the statutes is created to read:

6 66.0627 (8) (c) An installment payment authorized under par. (a) that is
7 delinquent becomes a lien on the property that benefits from the improvement or
8 application as of the date of delinquency. A lien under this paragraph has the same
9 priority as a special assessment lien.

10 **SECTION 4.** 66.0627 (8) (d) of the statutes is created to read:

11 66.0627 (8) (d) A political subdivision that, under par. (a), makes a loan to, or
12 enters an agreement with, an owner for making or installing an improvement or
13 application that costs \$250,000 or more shall require the owner to obtain a written
14 guarantee from the contractor or project engineer that the improvement or
15 application will achieve a savings-to-investment ratio of greater than 1.0 and shall
16 ~~agree to~~ ^{that the contractor or engineer will} annually pay the owner any shortfall in savings below this level. The
17 political subdivision may determine the method by which a guarantee under this
18 paragraph is enforced.

19 **SECTION 5.** 66.0627 (8) (e) of the statutes is created to read:

20 66.0627 (8) (e) If the making or installing of an improvement or application
21 under par. (a) costs less than \$250,000, the political subdivision may require a
22 3rd-party technical review of the projected savings of the improvement or
23 application as a condition of making a loan or entering into an agreement under par.
24 (a).

25 **SECTION 6. Initial applicability.**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3731/1dn
EVM:sbb&kjf:jm

Kjf

Date

ATTN: Ryan Smith

This version of the draft contains a change from the previous version in s. 66.0627 (8) (d), as created by this draft. The change is as follows:

66.0627 (8) (d) A political subdivision that, under par. (a), makes a loan to, or enters an agreement with, an owner for making or installing an improvement or application that costs \$250,000 or more shall require the owner to obtain a written guarantee from the contractor or project engineer that the improvement or application will achieve a savings-to-investment ratio of greater than 1.0 and ~~shall agree to~~ that the contractor or engineer will annually pay the owner any shortfall in savings below this level. The political subdivision may determine the method by which a guarantee under this paragraph is enforced.

I believe the former language was a little unclear regarding who was responsible for making shortfall payments. Please let me know if you have any questions or further instructions.

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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3731/1dn
EVM:kjf:ph

February 1, 2012

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Parisi, Lori

From: Smith, Ryan

Sent: Wednesday, February 01, 2012 12:31 PM

To: LRB.Legal

Subject: Draft Review: LRB 11-3731/1 Topic: Property assessed clean energy.

Please Jacket LRB 11-3731/1 for the SENATE.