S T A T E O F N E W Y O R K

5999

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. THIELE -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law and the local finance law, in relation to the financing of the installation of distributed generation renewable energy sources or energy efficiency improvements

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general municipal law is amended by adding a new article 2-A to read as follows:

ARTICLE 2-A

FINANCE OF THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS

SECTION 27. LEGISLATIVE FINDINGS.
27-A. DEFINITIONS.
27-B. CONTRACTUAL ASSESSMENTS.
27-C. REPORT.
27-D. PURCHASE AND INSTALLATION.
27-E. LIENS.

S 27. LEGISLATIVE FINDINGS. 1. THE LEGISLATURE FINDS THAT ENERGY CONSERVATION EFFORTS, INCLUDING THE PROMOTION OF ENERGY EFFICIENCY IMPROVEMENTS TO RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER REAL PROPERTY ARE NECESSARY TO ADDRESS THE ISSUE OF GLOBAL CLIMATE CHANGE.

2. THE UPFRONT COST OF MAKING RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER REAL PROPERTY MORE ENERGY EFFICIENT PREVENTS MANY PROPERTY OWNERS FROM MAKING THOSE IMPROVEMENTS. TO MAKE THOSE IMPROVEMENTS MORE AFFORDABLE AND TO PROMOTE THE INSTALLATION OF THOSE IMPROVEMENTS, IT IS NECESSARY TO AUTHORIZE A PROCEDURE FOR AUTHORIZING ASSESSMENTS TO FINANCE THE COST OF ENERGY EFFICIENCY IMPROVEMENTS.

3. THE LEGISLATURE DECLARES THAT A PUBLIC PURPOSE WILL BE SERVED BY A CONTRACTUAL ASSESSMENT PROGRAM THAT PROVIDES THE GOVERNING BODY OF ANY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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LOCAL GOVERNMENT WITH THE AUTHORITY TO FINANCE THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS THAT ARE PERMANENTLY FIXED TO RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER REAL PROPERTY.

4. THIS ARTICLE SHALL NOT BE USED TO FINANCE FACILITIES FOR PARCELS WHICH ARE UNDERGOING DEVELOPMENT.

5. THIS ARTICLE SHALL NOT BE USED TO FINANCE THE PURCHASE OR INSTALLATION OF APPLIANCES THAT ARE NOT PERMANENTLY FIXED TO RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER REAL PROPERTY.

6. ASSESSMENTS MAY BE LEVIED PURSUANT TO THIS ARTICLE ONLY WITH THE FREE AND WILLING CONSENT OF THE OWNER OF EACH LOT OR PARCEL ON WHICH AN ASSESSMENT IS LEVIED AT THE TIME THE ASSESSMENT IS LEVIED.

S 27-A. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "LOCAL GOVERNMENT" SHALL MEAN A CITY, TOWN, VILLAGE, OR COUNTY.

2. "GOVERNING BOARD" SHALL MEAN THE CITY COUNCIL, TOWN BOARD, VILLAGE BOARD, OR COUNTY LEGISLATURE OR BOARD OF SUPERVISORS.

3. "RENEWABLE ENERGY SOURCES AND ENERGY EFFICIENT IMPROVEMENTS" SHALL MEAN SOLAR THERMAL, PHOTOVOLTAIC, WIND, HYDROELECTRIC, GEOTHERMAL, GEOTHERMAL GROUND SOURCE HEAT, TIDAL ENERGY, WAVE ENERGY, OCEAN THERMAL, AND FUEL CELLS UTILIZING RENEWABLE FUELS AND IMPROVEMENTS WHICH RESULT IN ENERGY CONSERVATION AND EFFICIENCY.

S 27-B. CONTRACTUAL ASSESSMENT. 1. THE GOVERNING BODY OF ANY LOCAL GOVERNMENT MAY ALSO DETERMINE THAT IT WOULD BE IN THE PUBLIC INTEREST TO DESIGNATE AN AREA WITHIN THE LOCAL GOVERNMENT, WHICH MAY ENCOMPASS THE ENTIRE LOCAL GOVERNMENT OR A LESSER PORTION, WITHIN WHICH AUTHORIZED LOCAL GOVERNMENT OFFICIALS AND PROPERTY OWNERS MAY ENTER INTO CONTRACTUAL ASSESSMENTS TO FINANCE THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS THAT ARE PERMANENTLY FIXED TO REAL PROPERTY PURSUANT TO THIS ARTICLE.

2. THE GOVERNING BODY SHALL MAKE THESE DETERMINATIONS BY ADOPTING A LOCAL LAW. THE LOCAL LAW SHALL INCLUDE A STATEMENT THAT THE LOCAL GOVERNMENT PROPOSES TO MAKE CONTRACTUAL ASSESSMENT FINANCING AVAILABLE TO PROPERTY OWNERS, SHALL IDENTIFY THE KINDS OF PUBLIC WORKS, DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, OR ENERGY EFFICIENCY IMPROVEMENTS THAT MAY BE FINANCED, SHALL DESCRIBE THE BOUNDARIES OF THE AREA WITHIN WHICH CONTRACTUAL ASSESSMENTS MAY BE ENTERED INTO, AND SHALL BRIEFLY DESCRIBE THE PROPOSED ARRANGEMENTS FOR FINANCING THE PROGRAM. THE LOCAL LAW SHALL STATE THAT IT IS IN THE PUBLIC INTEREST TO FINANCE THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS, OR BOTH, PURSUANT TO SUBDIVISION ONE OF THIS SECTION, IF APPLICABLE. THE LOCAL LAW SHALL DIRECT PREPARATION OF A REPORT PURSUANT TO SECTION TWENTY-SEVEN-C OF THIS ARTICLE.

S 27-C. REPORT. THE REPORT REQUIRED BY SECTION TWENTY-SEVEN-B OF THIS ARTICLE SHALL CONTAIN ALL OF THE FOLLOWING:

1. A MAP SHOWING THE BOUNDARIES OF THE TERRITORY WITHIN WHICH CONTRACTUAL ASSESSMENTS ARE PROPOSED TO BE OFFERED;

2. A DRAFT CONTRACT SPECIFYING THE TERMS AND CONDITIONS THAT WOULD BE AGREED TO BY A PROPERTY OWNER WITHIN THE CONTRACTUAL ASSESSMENT AREA AND THE LOCAL GOVERNMENT;

3. A STATEMENT OF LOCAL GOVERNMENT POLICIES CONCERNING CONTRACTUAL ASSESSMENTS INCLUDING ALL OF THE FOLLOWING:

(A) IDENTIFICATION OF TYPES OF FACILITIES, DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, OR ENERGY EFFICIENCY IMPROVEMENTS THAT MAY BE FINANCED THROUGH THE USE OF CONTRACTUAL ASSESSMENTS;

(B) IDENTIFICATION OF A LOCAL GOVERNMENT OFFICIAL AUTHORIZED TO ENTER INTO CONTRACTUAL ASSESSMENTS ON BEHALF OF THE LOCAL GOVERNMENT;

(C) A MAXIMUM AGGREGATE DOLLAR AMOUNT OF CONTRACTUAL ASSESSMENTS; AND

(D) A METHOD FOR SETTING REQUESTS FROM PROPERTY OWNERS FOR FINANCING THROUGH CONTRACTUAL ASSESSMENTS IN PRIORITY ORDER IN THE EVENT THAT REQUESTS APPEAR LIKELY TO EXCEED THE AUTHORIZATION AMOUNT;

4. A PLAN FOR RAISING A CAPITAL AMOUNT REQUIRED TO PAY FOR WORK PERFORMED PURSUANT TO CONTRACTUAL ASSESSMENTS. THE PLAN MAY INCLUDE AMOUNTS TO BE ADVANCED BY THE LOCAL GOVERNMENT THROUGH FUNDS AVAILABLE TO IT FROM ANY SOURCE. THE PLAN MAY INCLUDE THE SALE OF A BOND OR BONDS OR OTHER FINANCING RELATIONSHIP. THE PLAN SHALL INCLUDE A STATEMENT OF OR METHOD FOR DETERMINING THE INTEREST RATE AND TIME PERIOD DURING WHICH CONTRACTING PROPERTY OWNERS WOULD PAY ANY ASSESSMENT. THE PLAN SHALL PROVIDE FOR ANY RESERVE FUND OR FUNDS. THE PLAN SHALL PROVIDE FOR THE APPORTIONMENT OF ALL OR ANY PORTION OF THE COSTS INCIDENTAL TO FINANCING, ADMINISTRATION, AND COLLECTION OF THE CONTRACTUAL ASSESSMENT PROGRAM AMONG THE CONSENTING PROPERTY OWNERS AND THE LOCAL GOVERNMENT; AND

5. A REPORT CONCERNING THE ADDITIONAL FEES, IF ANY, THAT SHALL BE CHARGED FOR INCORPORATING THE PROPOSED CONTRACTUAL ASSESSMENTS INTO THE ASSESSMENTS OF THE GENERAL TAXES OF THE LOCAL GOVERNMENT ON REAL PROPERTY, AND A PLAN FOR FINANCING THE PAYMENT OF SUCH FEES.

S 27-D. PURCHASE AND INSTALLATION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, UPON THE WRITTEN CONSENT OF AN AUTHORIZED LOCAL GOVERNMENT OFFICIAL, THE PROPOSED ARRANGEMENTS FOR FINANCING THE PROGRAM PERTAINING TO THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS THAT ARE PERMANENTLY FIXED TO REAL PROPERTY MAY AUTHORIZE THE PROPERTY OWNER TO PURCHASE DIRECTLY THE RELATED EQUIPMENT AND MATERIALS FOR THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS AND TO CONTRACT DIRECTLY FOR THE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS THAT ARE PERMANENTLY FIXED TO THE PROPERTY OWNER'S RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR OTHER REAL PROPERTY.

S 27-E. LIENS. ASSESSMENTS LEVIED PURSUANT TO THIS ARTICLE, AND THE INTEREST AND ANY PENALTIES THEREON SHALL CONSTITUTE A LIEN AGAINST THE LOTS AND PARCELS OF LAND ON WHICH THEY ARE MADE, UNTIL SUCH LIENS ARE PAID. ARTICLE ELEVEN OF THE REAL PROPERTY TAX LAW APPLIES TO THE LEVY AND COLLECTION OF ASSESSMENTS LEVIED PURSUANT TO THIS ARTICLE, INSOFAR AS SUCH PROVISIONS ARE NOT IN CONFLICT WITH THE PROVISIONS OF THIS ARTICLE, INCLUDING, BUT NOT LIMITED TO, THE COLLECTION OF ASSESSMENTS IN THE SAME MANNER AND AT THE SAME TIME AS THE GENERAL TAXES OF THE LOCAL GOVERNMENT ON REAL PROPERTY ARE PAYABLE AND ANY PENALTIES AND REMEDIES AND LIEN PRIORITIES IN THE EVENT OF DELINQUENCY AND DEFAULT.

S 2. Paragraph a of section 11.00 of the local finance law is amended by adding a new subdivision 104 to read as follows:

104. RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS. THE ACQUISITION AND INSTALLATION OF RENEWABLE ENERGY SOURCES OR ENERGY EFFICIENCY IMPROVEMENTS AS PROVIDED FOR IN ARTICLE TWO-A OF THE GENERAL MUNICIPAL LAW, THIRTY YEARS.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.