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

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2011-2012 Regular Sessions

I N A S S E M B L Y

March 17, 2011

Introduced by M. of A. CASTELLI -- read once and referred to the Committee on Energy

AN ACT to amend the general municipal law, in relation to the municipal sustainable energy financing program

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

Section 1. The article heading of article 5-L of the general municipal law, as added by chapter 497 of the laws of 2009, is amended to read as follows:

MUNICIPAL SUSTAINABLE ENERGY [LOAN] FINANCING PROGRAM

S 2. Section 119-ee of the general municipal law, as added by chapter 497 of the laws of 2009, is amended to read as follows:

S 119-ee. Legislative findings and declaration. The legislature finds and declares that it is the policy of the state to achieve statewide energy efficiency and renewable energy goals, reduce greenhouse gas emissions and mitigate the effect of global climate change, and advance a clean energy economy; and that to achieve such policy and goals the state must promote the deployment AND FINANCING of renewable energy systems and energy efficiency measures throughout the state; and that [municipalities] MUNICIPAL CORPORATIONS would fulfill an important public purpose by providing [loans] AND/OR ARRANGING TO PROVIDE FINANCING to property owners for the installation of renewable energy systems and energy efficiency measures WHICH MAY BE FURTHERED BY THE PARTICIPATION OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY AS HEREIN PROVIDED.

ESTABLISHING THE MEANS TO PROMOTE THE DEPLOYMENT OF RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY MEASURES THROUGHOUT THE STATE WILL FOSTER NOT ONLY A CLEAN ENERGY ECONOMY, LEADING TO THE DEVELOPMENT OF NEW INDUSTRIES AND NEW JOBS, BUT ALSO A CLEANER ENVIRONMENT. THE REDUCTION IN ENERGY DEMAND THAT WILL RESULT FROM THE DEPLOYMENT OF RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY MEASURES WILL: (A) HELP AVOID FUTURE

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

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ENERGY SHORTAGES; AND (B) ENABLE THE STATE AND MUNICIPAL CORPORATIONS TO RELY LESS ON SOURCES OF ENERGY THAT HAVE A DETRIMENTAL EFFECT ON AIR QUALITY, TO IMPROVE THE CLEANLINESS OF THE AIR IN THE STATE AND THEREBY TO CONTRIBUTE TO THE HEALTH AND WELL-BEING OF THE PEOPLE OF THE STATE.

TO ACHIEVE SUCH POLICY AND GOALS, THE LEGISLATURE FINDS THAT IT IS NECESSARY FOR THE STATE TO FACILITATE THE FINANCING OF RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS. FOR MANY BUILDING OWNERS, TRADITIONAL SOURCES OF FINANCING ARE EITHER TOO EXPENSIVE OR SIMPLY UNAVAILABLE TO PAY FOR THE COSTS OF INSTALLING RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS. WIDESPREAD DEPLOYMENT OF SUCH MEASURES CAN ONLY BE ACHIEVED WITH READILY AVAILABLE, COST-EFFECTIVE FINANCING TO MEET THE REQUIRED INITIAL CAPITAL INVESTMENTS.

THE LEGISLATURE DECLARES THAT IT IS NECESSARY FOR THE NEW YORK STATE ENERGY AND RESEARCH DEVELOPMENT AUTHORITY AND MUNICIPAL CORPORATIONS TO PLAY A CRITICAL ROLE IN FULFILLING THIS IMPORTANT PUBLIC PURPOSE BY PROVIDING COST-EFFECTIVE FINANCING FOR THE LARGE-SCALE INSTALLATION OF SUCH RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY MEASURES, FOR THE IMMEDIATE PROTECTION OF THE PUBLIC INTEREST AND FOR THE IMPLEMENTATION OF THE STATE'S GREENHOUSE GAS REDUCTION PLANS.

S 3. Section 119-ff of the general municipal law, as added by chapter 497 of the laws of 2009, is amended to read as follows:

S 119-ff. Definitions. For purposes of this article:

1. "ASSESSMENT DISTRICT" MEANS THE AREA WITHIN ONE OR MORE MUNICIPAL CORPORATIONS IN WHICH AN ENERGY EFFICIENCY IMPROVEMENT OR RENEWABLE ENERGY SYSTEM IS FINANCED PURSUANT TO THE PROVISIONS OF THIS ARTICLE.

2. "Authority" means the New York state energy research and development authority, as defined by subdivision two of section eighteen hundred fifty-one of the public authorities law, or its successor.

[2.] 3. "Credit support" means and includes direct loans, letters OR LINES of credit, loan guarantees, and insurance products; and the purchase of or commitment to purchase, or the sale of or commitment to sell, debt instruments, including subordinated securities.

[3.] 4. "Energy audit" means a formal evaluation of the energy consumption of a permanent building or structural improvement to real property, conducted by a contractor certified by the authority, or certified by a certifying entity approved by the authority for purposes of this article, for the purpose of identifying appropriate energy efficiency improvements that could be made to the property. A municipal corporation may, by local law, provide for the certification of such contractors based upon criteria at least as stringent as the state-wide criteria for certification adopted by the authority for purposes of this article.

[4.] 5. "Energy efficiency improvement" means and includes any renovation or retrofitting of a building to reduce energy consumption, such as window and door replacement, lighting, caulking, weatherstripping, air sealing, insulation, and heating and cooling system upgrades, and similar improvements, determined to be cost-effective pursuant to criteria established by the authority. WITH RESPECT TO ONE TO FOUR FAMILY RESIDENTIAL PROPERTIES, THE TERM "ENERGY EFFICIENCY IMPROVEMENT" MAY INCLUDE ANY COMBUSTION HEALTH AND SAFETY RELATED REPAIRS THAT ARE REQUIRED TO BE MADE IN CONJUNCTION WITH OTHER ENERGY EFFICIENCY IMPROVEMENTS IN ORDER TO CONFORM WITH THE STANDARDS OF THE CERTIFYING ENTITY DESCRIBED IN SUBDIVISION FOUR OF THIS SECTION. However, "energy efficiency improvement" shall not include lighting measures or household appliances that are not permanently fixed to real property. IN ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS, SUCH CITY MAY, BY

LOCAL LAW, OR BY RULE PROMULGATED PURSUANT TO SUCH LOCAL LAW, ESTABLISH SUCH CRITERIA, AS WELL AS LISTS OF COST-EFFECTIVE ENERGY EFFICIENCY IMPROVEMENTS, AS DETERMINED TO BE APPROPRIATE.

6. "GOVERNING BODY" MEANS: (I) IN ANY VILLAGE, THE VILLAGE BOARD; (II) IN ANY TOWN, THE TOWN BOARD; (III) IN ANY COUNTY, THE BOARD OF SUPERVISORS; (IV) IN ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS, THE CHIEF EXECUTIVE OFFICER OF SUCH CITY, AND IN ANY OTHER CITY, THE CITY COUNCIL OR COMMON COUNCIL.

[5.] 7. "Municipal corporation" means a county, town, city or village.

[6.] 8. "Renewable energy system" means an energy generating system for the generation of electric or thermal energy, to be used primarily at such property, by means of solar thermal, solar photovoltaic, wind, geothermal, anaerobic digester gas-to-electricity systems, fuel cell technologies, or other renewable energy technology approved by the authority not including the combustion or pyrolysis of solid waste. IN ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS, SUCH CITY MAY, BY LOCAL LAW, OR BY RULE PROMULGATED PURSUANT TO SUCH LOCAL LAW, APPROVE OTHER RENEWABLE ENERGY TECHNOLOGY NOT INCLUDING THE COMBUSTION OR PYROLYSIS OF SOLID WASTE, AS DETERMINED TO BE APPROPRIATE.

[7.] 9. "Renewable energy system feasibility study" means a written study, conducted by a contractor certified by the authority, or certified by a certifying entity approved by the authority for purposes of this article, for the purpose of determining the feasibility of installing a renewable energy system. A municipal corporation may, by local law, provide for the certification of such contractors based upon criteria at least as stringent as the state-wide criteria for certification adopted by the authority for purposes of this article.

S 4. Section 119-gg of the general municipal law, as added by chapter 497 of the laws of 2009, is amended to read as follows:

S 119-gg. Sustainable energy [loan] FINANCING program. 1. The legislative body of any municipal corporation may, by local law, establish a sustainable energy [loan] FINANCING program using, WITHOUT LIMITATION, federal grant assistance [or], federal credit support, OR ANY OTHER GRANTS available for this purpose, AND FOR MUNICIPAL CORPORATIONS WITH THE POWER TO ENFORCE DELINQUENT TAX LIENS, USING PROCEEDS FROM BONDS, NOTES OR OTHER EVIDENCE OF INDEBTEDNESS ISSUED BY THE AUTHORITY, OR ANY OTHER GRANTS, CREDIT SUPPORT OR OTHER MONIES MADE AVAILABLE BY THE AUTHORITY OR OTHERWISE AVAILABLE TO SUCH MUNICIPAL CORPORATION FOR SUCH PURPOSE. A MUNICIPAL CORPORATION WITH THE POWER TO ENFORCE DELINQUENT TAX LIENS MAY CAUSE THE ESTABLISHMENT OF A LOCAL DEVELOPMENT CORPORATION UNDER SECTION FOURTEEN HUNDRED ELEVEN OF THE NOT-FOR-PROFIT CORPORATION LAW, OR OTHER NOT-FOR-PROFIT CORPORATION, TRUST, LIMITED LIABILITY COMPANY, ASSOCIATION OR ORGANIZATION, TO ISSUE DEBT FOR A SUSTAINABLE ENERGY FINANCING PROGRAM AND TO PROVIDE ASSISTANCE TO SUCH MUNICIPAL CORPORATION IN THE IMPLEMENTATION OF A SUSTAINABLE ENERGY FINANCING PROGRAM, AND SUCH ASSISTANCE SHALL BE DEEMED TO LESSEN THE BURDEN OF GOVERNMENT AND CONSTITUTE ACTION IN THE PUBLIC INTEREST.

2. Such program may [make loans to] PROVIDE FINANCING TO OR FOR the owners of real property located within the municipal corporation [to finance] FOR the installation of renewable energy systems and energy efficiency improvements, related energy audits and renewable energy system feasibility studies, and the verification of the installation of such systems and improvements. [No] IN ORDER TO IMPLEMENT THE SUSTAINABLE ENERGY FINANCING PROGRAM, ANY municipal corporation [shall make such a loan to an owner of property that has received a loan from another

municipal corporation] ACTING pursuant to [this article] AUTHORIZATION BY RESOLUTION OF ITS GOVERNING BODY, MAY:

(A) ENTER INTO A CONTRACT WITH THE AUTHORITY UPON SUCH TERMS AND CONDITIONS AS THE AUTHORITY AND THE MUNICIPAL CORPORATION SHALL DETERMINE. SUCH CONTRACT MAY PROVIDE FOR THE SALE OR ASSIGNMENT BY A MUNICIPAL CORPORATION, AND THE PURCHASE OR ACQUISITION BY THE AUTHORITY (USING THE PROCEEDS OF AUTHORITY BONDS OR MONEYS OF THE AUTHORITY INCLUDING, WITHOUT LIMITATION, MONEYS HELD IN THE GREEN JOBS-GREEN NEW YORK FUND) OF FINANCING ARRANGEMENTS ORIGINATED BY, THROUGH OR ON BEHALF OF SUCH MUNICIPAL CORPORATION, PAYMENTS RECEIVED BY SUCH MUNICIPAL CORPORATION IN CONNECTION THEREWITH, OR ANY OTHER RIGHTS OR INTERESTS THEREIN, AND THE ESTABLISHMENT OF LOAN LOSS OR OTHER RESERVES WITH SUCH AUTHORITY MONEYS. SUCH CONTRACT MAY ALSO PROVIDE FOR THE REIMBURSEMENT OF COSTS BY ONE PARTY TO THE OTHER AND MAY AUTHORIZE THE AUTHORITY (OR ITS DESIGNEE) TO ACT AS AN AGENT OF THE MUNICIPAL CORPORATION WITH RESPECT TO SUCH FINANCING ARRANGEMENTS. ANY SUCH CONTRACT SHALL CONTAIN THE FOLLOWING CLAUSE: "THIS CONTRACT IS NOT A GENERAL OBLIGATION OF (INSERT NAME OF MUNICIPAL CORPORATION(S)). NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF (INSERT NAME OF MUNICIPAL CORPORATION(S)) ARE PLEDGED TO THE PAYMENT OF ANY AMOUNT DUE OR TO BECOME DUE UNDER SUCH CONTRACT. IT IS UNDERSTOOD THAT NEITHER THIS CONTRACT NOR ANY REPRESENTATION BY ANY PUBLIC EMPLOYEE OR OFFICER CREATES ANY LEGAL OR MORAL OBLIGATION TO APPROPRIATE OR MAKE MONIES AVAILABLE FOR THE PURPOSE OF THE CONTRACT."; AND

(B) ENTER INTO SUCH OTHER CONTRACTS WITH THIRD PARTIES AS MAY BE NECESSARY OR APPROPRIATE TO IMPLEMENT SUCH PROGRAM, UPON TERMS AND CONDITIONS DEEMED APPROPRIATE BY SUCH MUNICIPAL CORPORATION, PROVIDED THAT SUCH TERMS AND CONDITIONS ARE CONSISTENT WITH ALL OF THE STANDARDS AND REQUIREMENTS SET FORTH IN THIS ARTICLE.

NO MUNICIPAL CORPORATION SHALL PROVIDE SUCH FINANCING TO OR FOR AN OWNER OF PROPERTY THAT HAS RECEIVED FINANCING FROM ANOTHER MUNICIPAL CORPORATION PURSUANT TO THIS ARTICLE FOR THE SAME IMPROVEMENTS, UNLESS PURSUANT TO JOINT SUSTAINABLE ENERGY FINANCING PROGRAM ESTABLISHED WITH SUCH OTHER MUNICIPAL CORPORATION.

3. Each such local law establishing the sustainable energy [loan] FINANCING program shall provide for the criteria for making such [loans] FINANCING AVAILABLE and the terms and conditions for repayment of such [loans] FINANCING. The sustainable energy [loan] FINANCING program shall use such lists of cost effective energy efficiency improvements for different building types as are approved by the authority, OR IN ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS, AS ARE ESTABLISHED BY SUCH CITY BY LOCAL LAW, OR BY RULE PROMULGATED PURSUANT TO SUCH LOCAL LAW.

4. The municipal corporation shall verify and report on the installation and performance of renewable energy systems and energy efficiency improvements financed by the loan program in such form and manner as the authority may establish, PROVIDED THAT, IN ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS, SUCH CITY MAY, BY LOCAL LAW, OR BY RULE PROMULGATED PURSUANT TO SUCH LOCAL LAW, ESTABLISH A SYSTEM FOR VERIFYING THE INSTALLATION AND PERFORMANCE OF RENEWABLE ENERGY SYSTEMS AND ENERGY EFFICIENCY IMPROVEMENTS FINANCED BY THE PROGRAM.

5. Every [loan] FINANCING made under the sustainable energy [loan] FINANCE program shall be repaid over a term not to exceed the weighted average of the useful life of such systems and improvements as determined by the municipal corporation. The municipal corporation shall set

a fixed rate of interest for the repayment of the principal amount of each [loan] ASSESSMENT at the time the [loan] FINANCING is made.

6. The [principal] amount [of each such loan] FINANCED BY THE MUNICIPAL CORPORATION FOR AN IMPROVEMENT, excluding interest, shall not exceed the lesser of ten percent of the [appraised] FAIR MARKET VALUE OF THE real property [value], AS DETERMINED BY THE MUNICIPAL CORPORATION, or the actual cost of installing the renewable energy system and energy efficiency improvements[, including]. FINANCING PROVIDED PURSUANT TO THIS SECTION MAY INCLUDE the costs of necessary equipment, materials, and labor, the costs of each related energy audit and renewable energy system feasibility study, [and] the cost of verification of such renewable energy system and energy efficiency improvements, AND ANY OTHER RELATED TRANSACTION AND/OR ADMINISTRATION COSTS.

7. No such [loan] FINANCING shall be made for energy efficiency improvements unless determined to be appropriate through an energy audit, and no such [loan] FINANCING shall be made for a renewable energy system unless determined to be feasible through a renewable energy system feasibility study.

8. [The loan] ANY ASSESSMENTS made under the sustainable energy [loan] FINANCING program shall constitute a lien upon the real property benefitted by such [loan] FINANCING.

9. The municipal corporation may require [the loan] ANY FINANCING made under the sustainable energy [loan] FINANCING program to be repaid by the property owner through [a charge] AN ASSESSMENT on the real property benefitted by such [loan] FINANCING. A MUNICIPAL CORPORATION IS HEREBY AUTHORIZED TO ASSESS REAL PROPERTY LOCATED WITHIN ITS JURISDICTION BENEFITTED BY IMPROVEMENTS FINANCED BY THE SUSTAINABLE ENERGY FINANCING PROGRAM, FOR THE REPAYMENT OF SUCH FINANCING AS WELL AS ANY OTHER COSTS RELATED TO THE SUSTAINABLE ENERGY FINANCING PROGRAM. Such charge shall be on the real property and shall be levied and collected at the same time and in the same manner as municipal taxes, provided that such charge shall be separately listed on the tax bill, and provided further that in the event such charge should not be paid in a timely manner, no other municipal corporation shall be required to credit or otherwise guarantee the amount of such unpaid charge to the municipal corporation which authorized the [loan] FINANCING, notwithstanding any provision of law to the contrary. ANY COUNTY, TOWN, CITY OR VILLAGE MAY ENTER INTO AGREEMENTS WITH A MUNICIPAL CORPORATION AND/OR THE AUTHORITY RELATING TO THE ADMINISTRATIVE FUNCTIONS OF THE FINANCING PROGRAM INCLUDING, BUT NOT LIMITED TO, INCORPORATING ASSESSMENT CHARGES ON TAX BILLS, DETERMINING FAIR MARKET VALUES, PROVIDING NOTIFICATIONS WHEN SUCH ASSESSMENTS HAVE NOT BEEN PAID AND COLLECTING UNPAID ASSESSMENTS; PROVIDED, HOWEVER, NO TOWN, VILLAGE OR CITY SHALL BE AUTHORIZED TO ENTER INTO ANY SUCH AGREEMENT WITH ANY COUNTY OTHER THAN THE COUNTY IN WHICH SUCH TOWN, CITY OR VILLAGE IS LOCATED. ALL OF THE PROVISIONS OF THE REAL PROPERTY TAX LAWS OF THE STATE AND MUNICIPAL CORPORATIONS COVERING THE ENFORCEMENT AND COLLECTION OF UNPAID TAXES OF THE MUNICIPAL CORPORATION SHALL APPLY TO THE ENFORCEMENT AND COLLECTION OF SUCH UNPAID ASSESSMENTS.

10. ONE OR MORE MUNICIPAL CORPORATIONS MAY ESTABLISH AN ASSESSMENT DISTRICT TO FINANCE AN ENERGY EFFICIENCY IMPROVEMENT OR RENEWABLE ENERGY SYSTEM BY PREPARING AND FILING IN THE OFFICE OF THE CLERK OF SUCH MUNICIPAL CORPORATION A MAP OR PLAN OF THE PROPOSED BOUNDARIES OF THE ASSESSMENT DISTRICT, WHICH MAY BE NON-CONTIGUOUS. AFTER FILING SUCH PROPOSED MAP OR PLAN, THE GOVERNING BODY OF THE MUNICIPAL CORPORATION SHALL PUBLISH IN THE OFFICIAL PAPER, AT LEAST TEN DAYS BEFORE THE HEARING, A NOTICE OF THE FILING OF SUCH PROPOSED MAP OR PLAN, AND THAT AT A SPECI-

FIED TIME AND PLACE A HEARING WILL BE HAD TO REVIEW AND FINALIZE THE SAME, AND THAT THE SAID MAP OR PLAN CAN BE EXAMINED BY ANY PERSON INTERESTED THEREIN AT THE OFFICE OF THE APPLICABLE OFFICE OF THE MUNICIPAL CORPORATION DURING USUAL BUSINESS HOURS, PRIOR TO SUCH HEARING. THE GOVERNING BODY SHALL MEET AT THE TIME AND PLACE SPECIFIED IN SUCH NOTICE AND HEAR OBJECTIONS TO THE ASSESSMENT DISTRICT BOUNDARIES SET FORTH ON SUCH PROPOSED MAP OR PLAN. IT MAY MODIFY AND CORRECT THE SAME AND ADD OR EXCLUDE LAND TO OR FROM THE BOUNDARIES OF THE DISTRICT, AND MAY ADJOURN THE HEARING FROM TIME TO TIME WITHOUT FURTHER NOTICE AND, AS SOON AS PRACTICABLE, SHALL FINALIZE SAID ASSESSMENT DISTRICT MAP AND FILE THE SAME IN THE APPROPRIATE OFFICE OF THE MUNICIPAL CORPORATION, AND PUBLISH NOTICE OF SUCH COMPLETION AND FILING IN THE OFFICIAL PAPER, AT WHICH TIME THE MAP SHALL BE DEEMED FINAL AND CONCLUSIVE.

11. NO AMOUNT SHALL BE ASSESSED UPON ANY PROPERTY WITHIN AN ASSESSMENT DISTRICT PURSUANT TO A SUSTAINABLE ENERGY FINANCING PROGRAM WITHOUT THE WRITTEN CONSENT OF ALL OWNERS OF SUCH PROPERTY, SET FORTH IN AN AGREEMENT WITH THE MUNICIPAL CORPORATION PROVIDING THE TERMS AND CONDITIONS UPON WHICH FINANCING WILL BE PROVIDED TO AND REPAID BY THE OWNERS OF SUCH PROPERTY.

12. NOTHING IN THIS ARTICLE SHALL PREVENT A TOWN FROM ELECTING TO PROCEED UNDER SECTION TWO HUNDRED NINE-I OF THE TOWN LAW.

S 5. This act shall take effect immediately.