STATE OF NEW YORK

3579--B

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. FAHY, BURDICK, SEAWRIGHT, LUNSFORD -- read once and referred to the Committee on Local Governments -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Local Governments in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law and the education law, in relation to excluding renewable energy pilot projects and certain energy system-related payments in lieu of taxes from tax cap calculations; and to amend the executive law, in relation to establishing a distributed generation energy development program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (iv) of paragraph (g) of subdivision 2 of section 3-c of the general municipal law, as added by section 1 of part A of chapter 97 of the laws of 2011, is amended and a new subparagraph (v) is added to read as follows:

(iv) in years in which the normal contribution rate of the New York state teachers' retirement system, as defined by paragraph a of subdivision two of section five hundred seventeen of the education law, increases by more than two percentage points from the previous year, a tax levy necessary for expenditures for the coming fiscal year for local government employer contributions to the New York state teachers' retirement system caused by growth in the normal contribution rate minus two percentage points[~~.~~]*;*

(v) a tax levy necessary for expenditures for renewable energy pilot programs.

§ 2. Subparagraphs (iii) and (vi) of paragraph (c) of subdivision 3 of section 3-c of the general municipal law, as added by section 1 of part A of chapter 97 of the laws of 2011, are amended to read as follows:

(iii) Add any payments in lieu of taxes that were receivable in the prior fiscal year***, other than payments in lieu of taxes receivable in***

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

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connection with energy systems defined in section four hundred eighty-seven of the real property tax law.

(vi) Subtract any payments in lieu of taxes receivable in the coming fiscal year, other than payments in lieu of taxes receivable in connection with energy systems defined in section four hundred eighty-seven of the real property tax law.

§ 3. Subparagraphs 3 and 6 of paragraph a of subdivision 3 of section 2023-a of the education law, as added by section 2 of part A of chapter 97 of the laws of 2011, are amended to read as follows:

(3) Add any payments in lieu of taxes that were receivable in the prior school year, other than payments in lieu of taxes receivable in connection with energy systems defined in section four hundred eighty-seven of the real property tax law.

(6) Subtract any payments in lieu of taxes receivable in the coming fiscal year, other than payments in lieu of taxes receivable in connection with energy systems defined in section four hundred eighty-seven of the real property tax law.

§ 4. The executive law is amended by adding a new section 94-e to read as follows:

§ 94-e. Distributed generation energy development program. 1. Purpose. It is the purpose of this section to advance the development of distributed generation energy facilities in this state by providing a single forum for a state-level appeals process in which the office of renewable energy siting may undertake a coordinated and timely review of proposed distributed generation energy facilities to meet the state's renewable energy goals while ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to advance approvals of such facilities as more specifically provided in this section.

2. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Executive director" or "director" means the executive director of the office of renewable energy siting.

(b) "Office" shall mean the office of renewable energy siting created pursuant to section ninety-four-c of this article.

(c) "CLCPA targets" means the public policies established in the climate leadership and community protection act enacted by chapter one hundred six of the laws of two thousand nineteen, as amended, including the requirement that a minimum of seventy percent of the statewide electric generation be produced by renewable energy systems by two thousand thirty, that by the year two thousand forty the statewide electrical demand system will generate zero emissions and the procurement of at least ten gigawatts of photovoltaic solar generation by two thousand thirty and to support six gigawatts of statewide energy storage capacity by two thousand thirty.

(d) "State agency account" or "account" means the account established by the office pursuant to subdivision eight of this section.

(e) "Local agency" means any local agency, board, district, commission or governing body, including any city, county, and other political subdivision of the state or any state agency, or other governmental unit or agency.

(f) "Municipality" means a county, city, town, or village in the state.

(g) "Department" means the department of state.

(h) "Distributed generation energy facility" means any renewable energy system, as such term is defined by section sixty-six-p of the public

service law, with a nameplate generating capacity of twenty thousand kilowatts AC or less. The term "distributed generation energy facility" shall include any distributed energy resource with a nameplate capacity of twenty thousand kilowatts AC or less, provided that the resource does not utilize fossil fuels.

(i) "Affected party" means a permit applicant, landowner, a lease, easement or option holder, including but not limited to an individual who has an identifiable and substantial legal interest in the property, who has received a permit denial, variance denial, a positive declaration under the state environmental quality review act, a local agency has imposed arbitrary and capricious requests for system modifications, has imposed multiple moratoriums, has failed to approve a hardship waiver, or a local agency has failed to act to approve or deny the permit application for more than three hundred five days.

(j) "Agent" or "agents" means an affected party's business partner, attorney, consultant, engineer, planner, or any individual with legal authority to represent an appellant's interests.

(k) "Appealable action" means a permit denial, site plan denial, variance denial, a positive declaration under the state environmental quality review act, municipal action that results in a denial and creates a prohibition or effective prohibition within the municipality of the services provided by any eligible project as specified under subdivision three of this section, the imposition of arbitrary or capricious requests for system modifications by a local agency, the imposition of multiple moratoriums, failure of a local agency to approve a hardship waiver, or a local agency's failure to act upon a permit application for more than three hundred five days.

(l) "Appellant" means an affected party who has filed an appeal of a permit denial, site plan denial, variance denial, a positive declaration under the state environmental quality review act, the imposition of arbitrary or capricious requests for system modifications by a local agency, the imposition of multiple moratoriums, as these terms are defined in this section, or a local agency's failure to act upon a permit application for more than three hundred five days.

(m) "Area variance denial" means a local agency's denial of an application for an area variance or denial of an application to amend such area variance.

(n) "Permit denial" means a local agency's denial of an application for a special use permit, a conditional use permit, or a special exception, or denial of an application to renew or amend such permit.

(o) "Site plan denial" means a local agency's denial of an application for site plan approval or denial of an application to renew or amend such site plan denial.

(p) "Use variance denial" means a local agency's denial of an application for a use variance or denial of an application to amend such use variance.

(q) "Positive declaration" means a positive declaration under the state environmental quality review act.

(r) "Denial determination" means the adoption of a resolution or other such action by a local agency, or the content of a local agency's meeting minutes, which may include any other communication from the local agency.

(s) "Notification letter" means a form letter from the office website that can be downloaded, populated and sent to the local agency via certified mail by the affected party, notifying the local agency of the request for a declaratory ruling.

(t) "Permit appeal notification letter" means a letter sent by the office via certified mail to the affected party and the local agency notifying such affected party and local agency of the dates of the permit appeal conference.

(u) "Permit appeal conference" means a virtual conference, chaired by the local agency, including the local agency and the affected party. The purpose of the appeal conference is to allow the local agency an opportunity to ask questions about, and the affected party to respond to, the request for a declaratory ruling and the denial determination.

(v) "Request for declaratory ruling" means the affected party's official request to initiate the appeal process. The request for declaratory ruling shall include the name of the affected party, appealable action, the reason or reasons for the appeal, and any previously submitted supporting data and information. A grant of right of entry for the office to the project site is a condition of the request for declaratory ruling to allow the office to clarify elements of the record or to conduct field tests or visual assessments for purposes directly related to the appeal. A standard request for declaratory ruling form shall be provided to the affected party. The affected party initiates the administrative appeal process by providing an acceptable request for declaratory ruling to the office, which includes a notification letter delivered to the local agency via certified mail notifying the local agency of the affected party's request for declaratory ruling.

(w) "State environmental quality review act" means article eight of the environmental conservation law.

3. Project eligibility. The permitting state-level appeals process under this section shall only be available to projects that meet the following criteria:

(a) A project with a nameplate capacity of twenty thousand kilowatts AC or less;

(b) A project not sited on land belonging to a native tribe; and

(c) A project experiencing unreasonable local permitting hardship, including but not limited to:

(i) A municipality or local agency has codified local laws regarding distributed energy resources that are exclusionary or impossible to comply with, including but not limited to infeasible recycling requirements, tree removal limitations, setback requirements, or ground coverage ratio restrictions;

(ii) A municipality or local agency has enacted repeated moratoriums on solar or other distributed energy resources;

(iii) A municipality or local agency has made arbitrary and capricious requests for system modifications;

(iv) A developer has made a good-faith effort to secure municipal approval by utilizing the municipality's variance, site plan and/or special use permit process and has received a denial from a local agency, or the local agency has failed to act;

(v) A local agency has failed to approve a hardship waiver; or

(vi) A local agency has failed to act to approve or deny the permit application for more than three hundred five days.

4. Process and timeline. The streamlined state-level appeals process for distributed generation energy facilities under this section shall not exceed sixty calendar days, provided the appellant's application is complete, and shall comply with the following:

(a) The filing of an appeal shall occur when a copy of the application for appeal to the office of renewable energy siting is filed with the town clerk or their equivalent;

(b) Notwithstanding any law, rule, or regulation to the contrary, the office shall, within thirty days of its receipt of an application for a declaratory ruling, determine whether such application is complete and notify the applicant of such determination. If the office does not deem such application complete, the office shall set forth in writing to be delivered to such applicant the reasons why it has determined such application to be incomplete. If the office fails to make a determination within such thirty-day time period required under this paragraph, such application shall be deemed complete; provided, however, that such applicant may consent to an extension of the sixty-day time period for determining application completeness provided under the opening paragraph of this subdivision.

(c) For applications deemed complete, following consultation with any relevant state agency or authority, a final declaratory ruling shall be issued. In making such determination, the office may elect not to apply, in whole or in part, any local law or ordinance which would otherwise be applicable if the office finds that, as applied to the proposed distributed generation energy facility, such local law or ordinance is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed distributed generation energy facility.

(d) Notwithstanding any other deadline made applicable by this section, the office shall make a final decision on an appeal for any distributed generation energy project within sixty days of receiving a complete application. Unless the office and the applicant have agreed to an extension, with such extension limited to thirty days, and if a final declaratory ruling decision has not been made by the office within such time period, then such declaratory ruling shall be deemed to have been automatically granted for all purposes set forth in this section.

5. Office of renewable energy siting; responsibilities. (a) The office of renewable energy siting is hereby charged with the review of requests for declaratory rulings on distributed generation energy facilities. The office shall exercise its authority by and through the executive director.

(b) The office shall, within one hundred eighty calendar days of the effective date of this section, promulgate the necessary rules and regulations to implement the appeals process established by this section, including the establishment of a set of uniform standards and conditions for the process for such declaratory rulings relevant to issues that are common for distributed generation energy facilities, in consultation with the New York state energy research and development authority, the department of environmental conservation, the department of public service, the department of agriculture and markets, and any other relevant state agencies and authorities with subject matter expertise, provided that the office shall promulgate regulations requiring the service of appeals on affected municipalities and political subdivisions simultaneously with submission of an appeal to the office.

(c) The office, by and through the executive director, shall be authorized to conduct hearings and dispute resolution proceedings, issue declaratory rulings, and adopt such rules, regulations, and procedures as may be necessary, convenient, or desirable to effectuate the purposes of this section.

(d) At the request of the office, all other state agencies and authorities are hereby authorized to provide support and render services to the office within their respective functions.

6. Applicability. (a) Beginning upon the effective date of this section, a permit resulting from an appeal issued by the office may be transferred or assigned to a person that agrees to comply with the terms, limitations and conditions contained in such permit, and shall apply to any renewal of such permit.

(b) The office or a permittee may initiate an amendment to an appeal under this section. An amendment initiated by the office or permittee that is likely to result in any material increase in any environmental impact or involves a substantial change to the terms or conditions of a declaratory ruling shall comply with the public notice and hearing requirements of this section.

(c) Any hearings or dispute resolution proceedings initiated under this section or pursuant to rules or regulations promulgated pursuant to this section may be conducted by the executive director or any person to whom the executive director shall delegate the power and authority to conduct such hearings or proceedings in the name of the office at any time and place.

7. Powers of municipalities and state agencies and authorities; scope of section. (a) Notwithstanding any other provision of law, including without limitation article eight of the environmental conservation law and article seven of the public service law, no other state agency, department or authority, or any municipality or political subdivision or any agency thereof may, except as expressly authorized under this section or the rules and regulations promulgated under this section, require any approval, consent, permit, certificate, contract, agreement, or other condition for the development, design, construction, operation, or decommissioning of a distributed generation energy facility with respect to which an application for a declaratory ruling has been filed, provided in the case of a municipality, political subdivision or an agency thereof, such entity has received notice of the filing of the application therefor. Notwithstanding the provisions of this paragraph, the department of environmental conservation shall be the permitting agency for permits issued pursuant to federally delegated or federally approved programs.

(b) This section shall not impair or abrogate any federal, state or local labor laws or any otherwise applicable state law for the protection of employees engaged in the construction and operation of a distributed generation energy facility.

(c) The department of public service or the public service commission shall monitor, enforce, and administer compliance with any terms and conditions set forth in a permit issued pursuant to this section and in doing so may use and rely on authority otherwise available under the public service law.

8. Fees; state agency account. Each application for a declaratory ruling shall be accompanied by a fee in an amount equal to one thousand dollars for each thousand kilowatts alternating current of capacity of the proposed distributed generation energy facility, with the total amount of such fee to be not less than one thousand dollars, to be deposited in an account to be known as the state agency account established for the purpose of recovering costs incurred by the office during the proceeding. Additionally, funds shall be permitted for suballocation to the New York state energy research and development authority for the services and expenses of the clean energy project siting team. The office may update such fee periodically solely to account for inflation.

§ 5. This act shall take effect immediately.