STATE OF NEW YORK

5974--A

Cal. No. 667

2023-2024 Regular Sessions

IN SENATE

March 24, 2023

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

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

Section 1. Section 119-ee of the general municipal law, as added by chapter 497 of the laws of 2009, is amended to read as follows:

§ 119-ee. Legislative findings and declaration. The legislature finds and declares**, and as reaffirmed in the New York state climate leadership and community protection act,** that it is the policy of the state to achieve statewide energy efficiency and renewable energy goals, reduce **economy-wide** 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 of renewable energy systems [~~and~~]**,** energy efficiency measures**, water efficiency measures, and resiliency improvements** throughout the state; **that measures to achieve reductions in energy use, reduce emissions, and scale distributed solar energy and beneficial electrical equipment in residential and commercial buildings, specifically have been identified as critical areas for investment to achieve these goals;** and that municipalities would fulfill an important public purpose by [~~providing~~] **facilitating market-based financing** loans to property owners for the installation of renewable energy systems [~~and~~]**,** energy efficiency measures**, water efficiency measures, and resiliency improvements**.

§ 2. Section 119-ff of the general municipal law, as amended by chapter 184 of the laws of 2020, is amended to read as follows:

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

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

LBD10455-02-3

1. "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. "Credit support" means and includes direct loans, letters 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. "Energy audit" means a formal evaluation of the energy consumption **or carbon intensity** 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 or incorporated into the construction of the property **and determining the useful life of such improvements. An energy audit may document ancillary improvements and related costs that are required for the energy efficiency improvements to proceed and further shall document expected energy savings, secondary or societal benefits such as reductions in greenhouse gas emissions, and any other environmental, economic and public health co-benefits, including those enumerated in the scoping plans and related values created pursuant to article seventy-five of the environmental conservation law**. A municipal corporation may, by local law, provide for the certification of such **qualifying** contractors based upon criteria at least as stringent as the [~~state-wide~~] **statewide** criteria for certification adopted by the authority for purposes of this article.

4. "Energy efficiency improvement" means any improvement to real property, whether as a component of the new construction of a building or as the renovation or retrofitting of an existing building **designed** to **a.** 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~~] **or greenhouse gas emissions, b. exceed required energy code requirements at the time of project permitting, or c. meet another building design standard for energy or carbon performance as deemed appropriate by the authority**. However, "energy efficiency improvement" shall not include [~~lighting measures or~~] household appliances that are not permanently fixed to real property.

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

6. **"Qualifying contractor" means a contractor certified by the authority, or certified by a certifying entity approved by the authority for purposes of this article, and retained by the owner of real property or their designee.**

7. "Real property" means any property, an interest in which is or is eligible to be recorded or registered on municipal land ownership records by the possessor of such interest.

[~~7.~~] **8.** "Renewable energy system" means an energy generating system for the generation of electric or thermal energy, to be used primarily at such property, except when the owner of real property is a commercial entity, 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.

[~~8.~~] **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 **and the useful life of such system. A renewable energy system feasibility study may document ancillary improvements and related costs that are required for the renewables energy system to proceed and further shall document expected energy savings, secondary or societal benefits such as reductions in greenhouse gas emissions, and any other environmental, economic and public health co-benefits, including those enumerated in the scoping plans and related values created pursuant to article seventy-five of the environmental conservation law**. A municipal corporation may, by local law, provide for the certification of such **qualifying** contractors based upon criteria at least as stringent as the [~~**state-wide**~~] **statewide** criteria for certification adopted by the authority for purposes of this article.

10. "Resiliency improvement" means improvements to real property, whether as a component of the new construction of a building or as the renovation or retrofitting of an existing building, designed to increase the resilience of a qualifying property, including air quality, flood mitigation, stormwater management, beneficial electrification, energy storage and microgrids, alternative vehicle charging infrastructure, fire or wind resistance or inundation adaptation.

11. "Resiliency 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 resiliency improvement and the useful life of such improvement. A resiliency feasibility study may document ancillary improvements and related costs that are required for the renewables energy system to proceed and further shall document expected cost savings for the subject real property, secondary or societal benefits such as enhanced community resiliency, and any other environmental, economic and public health co-benefits, including those enumerated in the scoping plans and related values created pursuant to article seventy-five of the environmental conservation law. A municipal corporation may, by local law, provide for the certification of such qualifying contractors based upon criteria at least as stringent as the statewide criteria for certification adopted by the authority for purposes of this article.

12. "Water efficiency improvement" means any improvement to real property, whether as a component of the new construction of a building or as the renovation and retrofitting of an existing building, to reduce water consumption and promote water conservation and storage, such as lo-flow devices, restrictors, water recapture and recycling systems, and rainfall capture and storage systems.

13. "Water efficiency 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 water efficiency improvements and the useful life of such improvements. A water efficiency study may document ancillary improvements and related costs that are required for the renewables energy system to proceed and further shall document expected water savings, secondary or societal benefits such as recapture, recycling, and storage, and any other environmental, economic, and public health co-benefits, including those enumerated in the scoping plans and related values created pursuant to article seventy-five of the environmental conservation law. A municipal corporation may, by local law, provide for the certification of such qualifying contrac-

tors based upon criteria at least as stringent as the statewide criteria for certification adopted by the authority for purposes of this article.

§ 3. Section 119-gg of the general municipal law, as added by chapter 497 of the laws of 2009, subdivisions 1 and 6 as amended by chapter 320 of the laws of 2017, is amended to read as follows:

§ 119-gg. Sustainable energy loan program. 1. The legislative body of any municipal corporation may, by local law, establish a sustainable energy loan program using federal grant assistance or federal credit support or monies from the state of New York or any state authority as defined by section two of the public authorities law available for this purpose.

2. Such program may [~~make~~] facilitate loans to the owners of real property located within the municipal corporation to finance the installation of renewable energy systems [~~and~~], energy efficiency improvements, water efficiency improvements, resiliency improvements, related energy audits and renewable energy system feasibility studies, water efficiency studies, and resiliency improvement feasibility studies, and the verification of the installation of such systems and improvements. No municipal corporation shall make such a loan to an owner of property that has received a loan from another municipal corporation pursuant to this article.

3. Each such local law establishing the sustainable energy loan program shall provide for the criteria for making such loans and the terms and conditions for repayment of such loans. [~~The sustainable energy loan program shall use such lists of cost effective energy efficiency improvements for different building types as are approved by the authority.~~]

4. The municipal corporation shall verify and report on the installation and performance of renewable energy systems [~~and~~], energy efficiency improvements, water efficiency improvements, and resiliency improvements financed by the loan program in such form and manner as the authority may establish.

5. [~~Every~~] Notwithstanding subdivision three of this section, every loan made under the sustainable energy loan 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~~] qualifying contractor in the related energy audit, renewable energy system feasibility study, water efficiency study, or resiliency improvement feasibility study and there shall be a fixed rate of interest for the repayment of the principal amount of each loan at the time the loan is made.

6. Notwithstanding subdivision three of this section:

a. For loans made to an owner of real property that is a commercial entity, not-for-profit organization, or entity other than an individual, [~~the municipal corporation shall have the authority to impose requirements on the maximum amount that may be borrowed through such loan, which may consider factors including but not limited to the property value, projected savings, project cost, and existing indebtedness secured by such property~~] at the time of execution of a loan, the principal amount of such loan, excluding interest, shall not exceed the lesser of thirty-five percent of the appraised real property value, as stabilized or as complete, or the actual cost of installing renewable energy systems, energy efficiency improvements, water efficiency measures and resiliency improvements, including the costs of necessary equipment, materials, and labor, financing costs, the costs of each related energy audit and renewable energy system, water efficiency

study, and resiliency improvement feasibility study, and the cost of verification of such renewable energy system and energy efficiency, water efficiency, and resiliency improvements.

b. For loans made to an owner of real property who is an individual, the principal amount of each such loan, excluding interest, shall not exceed the lesser of ten percent of the appraised real property value or the actual cost of installing the renewable energy system [~~and~~], energy efficiency improvements, water efficiency measures and resiliency improvements, including the costs of necessary equipment, materials, and labor, financing costs, the costs of each related energy audit [~~and~~], renewable energy system feasibility study, water efficiency study, and resiliency improvement feasibility study, and the cost of verification of such renewable energy system and energy efficiency, water efficiency, and resiliency improvements.

c. At the time of execution of a loan, the principal amount of each such loan, excluding interest, plus any other debt secured by the real property, shall not exceed ninety percent of the appraised real property value, as stabilized or as complete.

d. The owner of a commercial real property shall provide the municipal corporation with the written consent, executed by each holder of a mortgage or deed of trust on the property securing indebtedness on the real property at the time of execution of a loan, indicating consent to the lien placed on the real property pursuant to subdivision eight of this section and that it does not constitute an event of default under the mortgage or deed of trust.

7. No such loan shall be made for energy efficiency improvements unless determined to be appropriate through an energy audit, [~~and~~] no such loan shall be made for a renewable energy system unless determined to be feasible through a renewable energy system feasibility study, no such loan shall be made for water efficiency measures unless determined to be appropriate through a water efficiency study, and no loan shall be made for resiliency improvements unless determined to be feasible through a resiliency feasibility study. Upon receipt of a certification from a qualifying contractor conducting the energy audit, renewable energy feasibility study, water efficiency study, or resiliency feasibility study that the proposed improvements are appropriate and satisfy the criteria set forth by the authority, a municipal corporation shall allow the financing of the full cost of improvements and related financing and ancillary costs that are the subject of the certification, subject only to the limits set forth in subdivision six of this section.

8. The loan made under the sustainable energy loan program shall constitute a lien upon the real property benefitted by such loan prior to all liens other than liens for real property taxes, municipal charges, or any other municipal liens.

9. The municipal corporation may require the loan made under the sustainable energy loan program to be repaid by the property owner through a charge on the real property benefitted by such loan. 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, notwithstanding any provision of law to the contrary. To the extent any such charge is not paid when due, the delinquent charge may be enforced or foreclosed to

the extent of any unpaid installment payments. In any event of enforcement, including foreclosure, the balance of the lien shall not accelerate and shall survive judgment. The proceeds received in an action to enforce an unpaid or delinquent charge shall be paid first to outstanding real property taxes, municipal charges, or other municipal liens.

§ 4. The New York state energy research and development authority shall publish revised guidelines for energy efficiency improvements and renewable energy systems in accordance with this act within 120 days of the effective date of this act, and shall publish guidelines for water efficiency and resiliency improvements within 360 days of the effective date of this act. Such revised guidelines shall be effective as soon as adopted, however each sustainable energy loan program may process applications received prior to the adoption date pursuant to existing guidelines published by the authority. Notwithstanding the foregoing, each sustainable energy loan program may apply the revised guidelines to energy efficiency improvements, renewable energy systems, water efficiency improvements, and resiliency improvements placed in service on the subject real property within three years of the date of the execution of a loan made under the sustainable energy loan program. Prior to publishing guidelines, the authority shall conduct public meetings to provide opportunities for public comment.

§ 5. This act shall take effect immediately.