STATE OF NEW YORK

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Introduced by M. of A. STERN, COLTON, SHIMSKY, HEVESI, KELLES, SIMONE, ROSENTHAL, BURDICK, SHRESTHA, SCHIAVONI, LEVENBERG, SLATER -- read once and referred to the Committee on Energy -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Energy 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, 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 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 of renewable energy systems and energy efficiency measures throughout the state; and that municipalities would fulfill an important public purpose by providing loans to property owners for the installation of renewable energy systems and energy efficiency measures. **Municipalities could also fulfill a public purpose by providing loans to commercial property owners for the installation of qualifying water improvements, qualifying resiliency improvements, and, in a city with a population of one million or more, the use of low carbon intensity building components.**

§ 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:

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

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

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 of a permanent building or structural improvement to real property, conducted by a qualifying 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. [~~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. "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 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,~~] or greenhouse gas emissions as determined [~~to be cost-effective pursuant to criteria established~~] by the authority, which shall at a minimum include considerations of cost-effectiveness. However, "energy efficiency improvement" shall not include lighting measures or household appliances that are not permanently fixed to real property.

5. "Feasibility study" means a written study of energy needs, water usage or needs, or resiliency needs, conducted by a qualifying contractor for the purpose of identifying appropriate and feasible permanent building or structural improvement to real property of renewable energy systems, qualifying water improvements, qualifying resiliency improvements or, in relation to real property located within a city with a population of one million or more an evaluation of carbon or greenhouse gas reduction needs for low carbon intensity building component improvements, that could be made to or incorporated into the construction of the property.

6. "Low carbon intensity building component improvement" means any permanently affixed 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, to reduce the carbon or other greenhouse gas emissions of those components or the improved property, as determined by the authority, which in addition to any expected energy savings, reductions in greenhouse gas emissions, and any other environmental, economic, and public health benefits, shall at a minimum include considerations of cost-effectiveness. However, "low carbon intensity building components" shall not include measures that are not permanently fixed to real property.

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

8. "Qualifying water 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, promote water conservation and storage, manage stormwater, resist flooding, and mitigate contamination in potable water systems, as

determined by the authority, which in addition to any expected energy savings, reductions in greenhouse gas emissions, and any other environmental, economic, and public health benefits, shall at a minimum include considerations of cost-effectiveness. However, "qualifying water improvements" shall not include measures that are not permanently fixed to real property.

[~~6.~~] 9. "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.~~] 10. "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 or the installation of energy storage, microgrids, or vehicle charging infrastructure.

[~~8. "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.~~]

11. "Greenhouse gas emissions" means all emissions, attributable to any permanent building or structural improvement to real property, of "greenhouse gases" as defined in subdivision seven of section 75-0101 of the environmental conservation law.

12. "Qualifying contractor" means a contractor that is: (a) certified by the authority, or certified by a certifying entity approved by the authority for purposes of this article, or (b) certified by a municipality pursuant to local law that incorporates criteria at least as stringent as the statewide criteria for certification adopted by the authority, to conduct an energy audit and a feasibility study.

13. "Qualifying resiliency improvements" means improvements to real property, a component of the new construction of a building, or the renovation or retrofitting of an existing building, that is designed to enhance the ability of the building to withstand or recover quickly from disruption from the current and future hazards of extreme weather events, including but not limited to floods, high winds, tornados, extreme temperature, heavy rainfall, sea level rise and wildfires, as determined by the authority, which in addition to any expected energy savings, reductions in greenhouse gas emissions, and any other environmental, economic, and public health benefits, shall at a minimum include considerations of cost-effectiveness. However, "qualifying resiliency improvements" shall not include measures that are not permanently fixed to real property.

§ 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 loans to the owners of real property located within the municipal corporation to finance the installation of renewable energy systems [~~and~~], energy efficiency improvements, **qualifying water improvements, and qualifying resiliency improvements, and if such real property is located within a city with a population of one million or more, low carbon intensity building components,** related energy audits and [~~renewable energy system~~] 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.

a. 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.

b. The qualifying water improvements, qualifying resiliency improvements, and if such real property is located within a city with a population of one million or more, low carbon intensity building components, shall use such lists for commercial building types as are approved by the authority.

c. Each such local law may provide criteria for qualifying contractors that may conduct energy audits or feasibility studies in the municipality, provided that such criteria are at least as stringent as the criteria established by the authority.

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

5. 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~~] **approve** a fixed rate of interest for the repayment of the principal amount of each loan at the time the loan is made.

6. 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.

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, including 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.

c. For loans to an owner of real property that is a commercial entity, the principal amount of such loan, excluding interest, shall, in no event, exceed thirty-five percent of the appraised real property value inclusive of the financed improvements as established by an appraisal accepted by the municipal corporation; provided, however, that the total debt on any such real property after the execution of a loan pursuant to this article shall not exceed ninety percent of the appraised real property, inclusive of the financed improvements as established by an appraisal accepted by the municipal corporation.

d. For all loans, the owner of the real property shall provide the municipal corporation, prior to approval of such loan, with the written consent of each holder of a mortgage, lien, or deed of trust on such real property, including consent to the charge and lien placed on the real property pursuant to this article, the priority of such lien, and if applicable, a statement that the charge and lien 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, qualifying water improvements, or qualifying resiliency improvements or, if such real property is located within a city with a population of one million or more, low carbon intensity building component improvements, unless determined to be feasible through a [~~renewable energy system~~] feasibility study; provided, however, that no such loan shall be made for a qualifying low-carbon intensity improvement without an appropriate engineering study in accordance with criteria developed by the authority.

8. An energy audit shall comply with all requirements established by the authority and shall document: (a) improvements and related costs that are required for the energy efficiency improvements to proceed; and (b) expected energy savings, any expected reductions in greenhouse gas emissions, and any other environmental, economic and public health benefits expected from the installation of the improvements, including those enumerated in the scoping plans and related values created pursuant to article seventy-five of the environmental conservation law; and (c) any other criteria the authority may specify.

9. A feasibility study shall comply with all requirements established by the authority and shall document: (a) improvements and related costs that are required for the renewable energy system, qualifying water improvements, or qualifying resiliency improvements or, if such real property is located within a city with a population of one million or more persons, low carbon intensity building component improvements, to proceed; and (b) expected energy savings, any expected reductions in greenhouse gas emissions, and any other environmental, economic and public health benefits expected from the installation of the improvements; and (c) any other criteria the authority may specify.

10. The loan made under the sustainable energy loan program shall constitute a lien upon the real property benefitted by such loan.

[~~9.~~] 11. 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, shall be payable by the property owner regardless of tax-paying or tax-exempt status, and shall be levied and collected at the same time and in [~~the same~~] a manner [~~as~~] consistent with the manner generally applied to 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.

§ 4. The New York state energy research and development authority is authorized to develop, update, or revise, and make public all relevant guidelines, criteria, or other requirements related to the implementation and administration of article 5-L of the general municipal law, as amended by this act; provided, further that, no municipal corporation shall issue or approve a new sustainable energy loan including a qualifying water improvement, qualifying resiliency improvement, or low carbon intensity building components as defined by such article prior to the publication of such updated program guidelines, criteria, or other requirements.

§ 5. This act shall take effect immediately; provided, however, that sections one, two, and three of this act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.