CLERK ITEM #358-18

THE NASSAU COUNTY LEGISLATURE
OFFICE OF LEGISLATIVE BUDGET REVIEW
MAURICE CHALMERS, DIRECTOR
FISCAL IMPACT STATEMENT

TITLE:
A Local Law to amend title 83 of the Miscellaneous Laws of Nassau County in relation to the sustainable energy loan program in the County of Nassau.

SUMMARY OF LEGISLATION:
In 2010, Nassau County passed Local Law number 6 with the purpose of promoting energy efficiency and renewable energy goals by enabling qualified property owners access to funding for energy efficiency and renewable energy system improvements. The program was inhibited from the start due to barriers such as State law not allowing for the use of County funds.

Subsequently, New York State passed Article 5-L of the General Municipal Law that enacted a Municipal Sustainable Energy Loan Program which local municipalities may opt into. It states that 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. The program has grown to include private financing through the Energy Improvement Corporation (EIC). The EIC has partnered with several banks and now has funds available to issue Property Assessed Clean Energy (PACE) financing.

The proposed local law would exercise the County's opt in provision and enable Nassau County to enter into a municipal agreement with the EIC, a local development corporation, which would then act on behalf of Nassau County and make funds available to qualified property owners that will be repaid by such property owners through charges on the real properties benefited by such funds. The program is entitled the Energize NY Benefit Financing Program. It works in the following fashion:

1. An interested commercial entity, not-for-profit organization or individual would apply to the EIC to obtain financing for an energy efficiency improvement. This is defined as any renovation or retrofitting of a building to reduce energy consumption which has been determined to be cost-effective pursuant to criteria established by the Authority, not including lighting measures or household appliances that are not permanently fixed to real property.
2. An energy audit must be performed to obtain funding for an energy efficient improvement and a renewable energy system feasibility study must be performed to obtain funding for a renewable energy system. These audits / studies must be conducted by a contractor

certified by the Authority; the cost of these shall be borne solely by the property owner but may be included in the financed amount if the work is approved.

3. For funds provided to a Qualified Property Owner which is a commercial entity, not-for-profit organization, or entity other than an individual, EIC shall have the authority to impose requirements on the maximum amount of funds to be provided, which may consider factors including but not limited to the property value, projected savings, project cost, and existing indebtedness secured by such property.

   For financings made to a Qualified Property Owner who is an individual, the funds provided shall not exceed the lesser of (i) ten percent of the appraised value of the real property where the Renewable Energy Systems and/or Energy Efficiency Improvements will be located, or (ii) the actual cost of installing the Renewable Energy Systems and/or Energy Efficiency Improvements, including the costs of necessary equipment, materials, and labor and the cost of verification of such systems and improvements.

4. The EIC will utilize the following criteria to make their approval determination:

   a. The propose energy efficiency improvements and/or renewable energy systems are determined to be cost effective based on guidelines issued by the Authority.

   b. The property owner may not be in bankruptcy and the property may not constitute property subject to any pending bankruptcy proceeding.

   c. No loan may be amortized for a period longer than the weighted average of the useful life of the improvement or system.

   d. Sufficient funds are available from the EIC to provide financing to the property owner.

   e. The property owner is current in payments on any existing mortgage.

   f. The property owner is current in payments on any existing real property taxes and has been current on real property taxes for the previous three years.

   g. Such additional criteria, not inconsistent with the previously listed criteria, that Nassau County or the EIC acting on its behalf may set.

5. Upon receiving EIC approval, the qualified property owner will sign an Energize NY Finance agreement with the EIC, on behalf of Nassau County. The agreement shall be in accordance with the following:

   a. The principal amount of the funds together with the interest, shall be paid to the property owner and shall be paid back by the property owner as a charge on their real property tax bill from Nassau County. The amortization shall be levied and collected at the same time and in the same manner as County of Nassau property taxes, provided that such charge shall be separately listed on the tax bill. The County of Nassau shall make payments to the EIC or its designee in the amount of all such separately listed charges within 30 days of the date the payment is due to be made to Nassau County.

   b. The term of the repayment shall be determined at the time the Energize NY Finance Agreement is executed by the property owner and the EIC. The term shall not exceed the weighted average of the useful life of the systems and improvements.

c. The rate of interest shall be fixed by the EIC acting on behalf of the County of Nassau at the time the Energize NY (ENY) Finance Agreement is executed by the property owner and EIC.

d. The charge shall constitute a lien upon the real property. A transferee of title to the benefited real property shall be required to pay any future installments including interest.

6. The EIC shall be responsible for verifying and reporting to Nassau County on the installation and performance of renewable energy systems and energy efficiency improvements financed by such program. Additionally, Nassau County shall verify and report to the New York State Energy Research and Development Authority, (NYSERDA) on the installation and performance of renewable energy systems and energy efficiency improvements financed by such program.

According to the EIC's 2017 audited financial statements, at the end of 2015, the EIC established a Municipal Tax Delinquency Fund, (MTDF), a service to provide the member municipalities with a ready source of funds during the pendency of a delinquent tax charge payment associated with an ENY financing. Participation is optional and requires the municipality to sign a separate agreement governing the MTDF and pay an annual fee. As of the end of 2017, no members had elected to participate in the MTDF.

The New York State law was written to allow for both residential and commercial customers. However, currently the only financial product available through the EIC is for commercial customers. A residential financial product would have to overcome the fact that a property assessment automatically becomes a first lien for any property. As such banks are reticent to lend money on a property with an existent PACE loan.

EFFECTIVE DATE:
This local law shall take effect immediately.

ECONOMIC IMPACT:
The proposed local law is expected to increase economic output, state and local tax revenues and local jobs. According to the EIC's 2017 audited financial statements, the corporation was formed on July 7, 2011 and in 2017 had 41 municipal members and an additional seven municipalities had passed local laws to become members and begin offering PACE financing for clean energy projects. Moreover, throughout the nation PACE financing has been used in 32 states.[1]

In 2011, ECONorthwest found that the $4.0 million in spending done by the four cities included in the PACENow coalition would generate on average $10.0 million in gross economic output, $1.0 million in combined federal, state and local tax revenue and 60 jobs.[2]

More recently, it was estimated that from 2012 to 2017 in Los Angeles County, PACE financing created 4,800 jobs and $500 million in economic activity.[3]

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[1] "Energize NY PACE Finance Program Launched in Sullivan County, NY", County of Sullivan, County Manager's Office, January 27, 2017.
[2] "Economic Impact Analysis of Property Assessed Clean Energy Programs (PACE)", ECONorthwest, April 2011.
[3] Leslie, Mary, "Los Angeles is Setting the PACE for the Clean Energy Economy", Huffingtonpost.com, November 9, 2017.

In Suffolk County, when it joined the Energize NY Program, solar industry companies opined that the commercial business because of PACE would increase anywhere from 25 to 50 percent.[4]

FISCAL IMPACT:

Nassau County's Department of Assessment opined that the EIC would provide Nassau County with the impacted parcels and the dollar amounts to be placed on the tax bills, and that there already was a process in place to add various Direct Assessments (unpaid water charges, cleanups, etc.) onto property tax bills. As such, they did not see an additional significant administrative fiscal impact. Similar results have been seen in Suffolk County where one deal has been closed with PACE financing.

The EIC allows for the County to enter into agreements for two separate PACE financing products. The proposed local law allows the County to enter either product. The choice would be specified in the agreement between Nassau County and the EIC. The difference between the two products hinges upon how the County remits PACE installment payments to the EIC.

The Administration intends to pursue the product where the County would only be liable to **pay the EIC upon receipt of a PACE installment**. This will occur at the end of September since the County receives the final tax warrants from Towns in Mid-September of each year. In this instance, there would be no financial loss since the County only remits a payment to the EIC when it receives a payment from a PACE property owner.

However, the other available EIC product could carry a fiscal impact to the County. Under this product the County is liable to pay the EIC within 30 days of the date the payment is due to be made to Nassau County. A cash flow issue may arise when the County must pay the EIC for a PACE installment that it has not received. Moreover, in cases where a property owner does not pay their property taxes, the County would still be liable to pay the EIC. In such an instance, the County would be obligated to pay the cost of the loan immediately to the EIC so that they could remit payment to the bond holders. The EIC PACE System has three safeguards that protect the municipality in this occurrence. These include:

1. Usage of the previously described MTDF insurance fund, which has an annual cost of $50.00 plus 3.0% of outstanding loans.
2. Usage of higher Interest Penalty on Taxes revenues, assuming these revenues increase inline with the additional PACE installment payments.
3. Usage of reimbursement payments from the EIC's Municipal Loss Reserve Fund (MLRF). If the property owner is continually delinquent and the foreclosure sale proceeds don't cover the amount owed to the County, the County can move to have the loan considered a permanent loss and be made whole through the MLRF. The County would still incur a temporary financial loss between the time when the County pays the EIC and when the County recuperates its costs from the MLRF.

SOURCES OF INFORMATION:

Nassau County Department of Assessment
Nassau County Treasurer's Office
Suffolk County Economic Development and Planning
Energize NY

PREPARED BY:

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[4] Harrington, Mark, "County Signs no to Green Energy Program", Newsday.com, August 30, 2016.