

# Legislation Eases Energy Project Funding

By Catherine Hill and Elizabeth Grisaru, Whiteman, Osterman & Hanna, LLP

On Nov. 23, 2009 Gov. David Paterson signed into law the Municipal Sustainable Energy Loan Program Bill (Ch. 497), which established a program to allow cities and towns to help property owners finance energy efficiency and renewable energy improvements without increasing their debt level. The legislation was necessary to allow New York to compete for \$454 million in federal loan guarantees.

The bill adopts a financing model developed in Berkeley, Calif. to finance the installation of solar panels. The financing model, known as Property Assessment Clean Energy financing, or PACE financing, authorizes a municipality, through a local law, to utilize its bonding authority to raise a pool of funds and then lend that money out to participating property owners who want to improve their energy efficiency or install renewable energy technologies on their property. The municipality then recovers that funding through a separately identified charge on the property owner's tax bill. This enables property owners to make energy efficiency and renewable energy purchases without having to get a loan from a bank. It also encourages property owners who may not know how long they want to stay in their homes to purchase equipment and upgrades that have long pay back periods, and then transfer both the upgrades and the cost of the upgrades to a subsequent owner.

New legislation introduced in the House by Congressman Steve Israel would expand support of the PACE bond programs by providing a 100 percent federal loan guarantee for PACE bonds (H.R.3836). Israel's bill redirects the proceeds of existing federal loan guarantee programs authorized by the stimulus package

and administered by the Department of Energy to provide guarantees for PACE bond programs.

From the property owners' perspectives, this structure should be very attractive, and many towns may wish to offer this program to their constituents. The long-term assessment allows the cost of the upgrade or renewable energy system to be spread out over time, during which the property owner also benefits from the energy savings attributable to the installation. It is anticipated that property owners that use PACE financing will actually save money because the money they save by using less energy will exceed the cost of the upgrades.

The bill defines the types of installations and activities that the municipality may finance. It encourages the installation of "renewable energy systems," such as solar thermal, solar voltaic, wind and geothermal technologies." It

also authorizes "energy efficiency improvements," which include "any renovation or retrofitting of a building to reduce energy consumption." The bill requires loan applicants to identify energy efficiency measures through an energy audit, or, if a property owner wants to install renewable energy technology, the applicant must perform a feasibility study. The principal amount of the loan cannot exceed 10 percent of the appraised value of the real property. Finally, the municipality may set the term of the loan equal to the "weighted average of the useful life" of the energy system or improvement.

If you have any questions on PACE financing legislation, how to implement PACE financing in your community or the status of Federal loan guarantees for PACE bonds, please feel free to contact the authors Catherine Hill at [chill@woh.com](mailto:chill@woh.com) or (518)487-7728 and Elizabeth Grisaru at [lgrisaru@woh.com](mailto:lgrisaru@woh.com) or (518)487-7624.

## Tips to Finance Programs to Make Your Town Green

By Jeffrey Storch, Esq., Cahill Wink, LLP

Often lost in the discussion of climate change and global warming are the steps local governments can take to effect the reduction of fossil fuels. Projects such as wind farms and solar panels, in addition to being prohibitively expensive for local governments, are often controversial. Recently, however, the federal government, with input from the public finance community, has devised financing mechanisms which will enable local governments to do their part in reducing their community's impact on the environment.

Through the use of Energy Efficient and Renewable Energy Financing Districts (EFDs), local governments can establish a low-cost (to both government and residents) financing program that will provide inexpensive "loans" to property owners to make environmentally friendly improvements to their buildings and homes (e.g. solar panels, energy retrofits). EFDs may issue Property Assessed Clean Energy (PACE) Bonds and distribute the proceeds of those bonds to

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interested property owners, who will be required to use the amounts to finance such improvements. PACE Bonds will be secured and repaid by a special tax, or assessment, on the owner's property, with such repayment to be made over a designated period of years. Upon sale or transfer of ownership of the property, the obligation to repay, as well as the special assessment, shall remain with the property until the loan is retired. In addition to increased energy efficiency and its lower associated costs, property owners also will benefit from longer repayment periods, potentially lower interest rates and tax deductible interest payments as compared to the typical home loan or second mortgage financing. Local governments establishing EFDs will have the unique opportunity to support climate change and low-cost clean energy building improvements while also stimulating their local economies through the jobs created by such improvements.

Whether EFDs will work for your community first requires an analysis as to how many property owners potentially would participate in such a program. The more participants, the lower the overall costs are to both the municipality and its property owners. Local governments also should examine local demographics (a municipality's ratio of renters vs. homeowners, as the program is not available to renters), the expected benefits to the community (for example, the relative reduction in electricity rates) and cheaper alternatives (for example, similar

programs may be offered through local utilities). Towns also should communicate with homeowners and community groups to gauge local interest in these types of programs.

Legislation (Ch. 497) was recently signed into law by Gov. David Paterson to authorize municipalities to establish EFDs and to provide the financing related thereto. However, several New York cities and towns already have

interest and weighing the benefits, the towns of Bedford and Babylon, as well as the city of Binghamton, now have special legislation authorizing green revolving loan programs similar to the type set forth above, and several communities around the country already have begun issuing bonds to finance such programs.

Should your town's residents show a marked interest in setting up such a program, it is important to discuss the next steps with your bond counsel and your town attorney.

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*Jeffrey E. Storch is counsel to the law firm of Cahill/Wink LLP and for the past 11 years has represented numerous municipalities and*

enacted special legislation at the state level allowing for such programs, and have now moved to the planning stages of financings. After gauging local

*school districts as bond counsel throughout the States of New York and Connecticut.*

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