Albany trying to take away PILOT authority from IDAs, local cities, towns and villages

The Cuomo Administration is proposing to remove local taxing authority over large-scale renewable energy projects from municipalities.

Last year's Executive Budget tried the same thing, but the proposal was dropped. Now the Cuomo Administration is renewing its effort in the current budget season to erode local control.

In 2011, Article 10 was enacted as part of the New York State Public Service Law, giving the New York State Board on Electric Generating Siting the power to authorize construction and operation of major renewable energy projects. Tax payment arrangements for the projects, including municipal payment in lieu of taxes (PILOT) arrangements or local industrial development agency sponsorship and resulting PILOT agreements, were left to the local communities. With a majority of siting board members appointed by the governor, no large-scale renewable energy project was denied approval.

Fast forward to April 2020 when the Accelerated Renewable Energy Growth and Community Benefit Act was established, replacing the Article 10 process by simplifying the permitting process through the new Office of Renewable Energy Siting (ORES). At the time that this new Act was being proposed, Governor Cuomo attempted to insert State agencies into the tax determinations for these projects. This language was removed before the Act was passed, leaving local taxing authority intact.

New York State Executive Law Section 94-C, passed in the April 2020 budget vote, establishes the new process which allows ORES to overrule municipal laws and to rule on industrial wind and solar projects within one year after a developer's application is considered complete. If a decision on a project application is not made by ORES within one year, approval is automatically given. The State has almost complete control over the size, location, local setbacks and almost every aspect of large-scale renewable energy projects – except for local tax payments. Those are still determined locally.

The governor has proposed to end this with new language (*see page 3 for new language underlined)* in his SFY 2021/22 Executive Budget that:

- Determines the assessed value of solar and industrial wind facilities
- Applies to the assessed value a discount rate published annually by the New York State Department of Taxation and Finance
    - Currently those projects can be assessed up to full value
- This language will have the practical effect of taking authority away from local governments and IDAs to negotiate PILOTs for large-scale renewable energy projects. It is a further erosion of Home Rule in New York State and prevents local governments from determining not only where in their communities large-scale solar and industrial wind projects should be located, but also the ability to determine the fair value to compensate local taxpayers to host these projects.

It is incumbent upon leaders of local municipalities and IDAs to immediately contact the governor and both houses of the state legislature, voicing their opposition to the Executive Budget language that will scuttle the ability of local jurisdictions to negotiate PILOTs with renewable energy developers. Leaders should also reach out to their state associations and urge them to contact Albany as well, asking them to protect Home Rule in New York State.

Note: The governor's 30-Day Budget Amendments include changes to the original budget language that eliminates the income valuation method in determining the assessed value of the property, mandates the appraisal model and makes other technical changes. Changes to proposed section 575 are listed on the following page with strikethrough for deleted and red for added language.

Governor Cuomo's originally proposed budget language is underlined. His 30-day budget amendment has been incorporated as follows: deleted language is shown with strike out; added language is in red.

§ 2. Subdivision 1 of section 575-a of the real property tax law, a added by section 1 of subpart F of part J of chapter 59 of the laws of 2019, is amended to read as follows:

1. Every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating or managing any electric generating facility in the state shall annually file with the commissioner, by April thirtieth, a report showing the inventory, revenue, and expenses associated therewith for the most recent fiscal year, and such other information as the commissioner may reasonably require. Such report shall be in the form and manner prescribed by the commissioner.

§ 575-b. Solar or wind energy systems. 1. The assessed value for solar or wind energy ~~system~~ systems, as defined in section four hundred eighty-seven of this chapter, shall be determined by ~~an income capitalization or~~ a discounted cash flow approach that includes:

(a) ~~Considers an~~ An appraisal model identified and published by the New York state department of taxation and finance, in consultation with the New York state energy research and development authority, within one hundred eighty days of the effective date of this section, and periodically thereafter as appropriate; and

(b) ~~Includes a~~ A solar or wind energy system discount rate published annually by the New York state department of taxation and finance.

2. ~~In addition to the~~ The reports required by section five hundred seventy-five-a of this title, ~~and notwithstanding any provision to the contrary contained in such section, the commissioner may require the owner or operator of a solar or wind energy system, as defined in section four hundred eighty-seven of this chapter, to annually file with the commissioner, by April thirtieth, a report showing~~ shall be designed to elicit such information as the commissioner may reasonably require for the development and maintenance of an appraisal model and discount rate.

3. The provisions of this section shall only apply to solar or wind energy systems with a nameplate capacity equal to or greater than one megawatt.