ECLEG MAY 21 '13 AM 8:07

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

May 21, 2013

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Home Rule Message: Assembly Bill A7245 and Senate Bill S5167
Buffalo Erie Niagara Land Improvement Corporation

Dear Honorable Members:

The Department of Environment and Planning is requesting legislative approval of a Home Rule Message for Assembly Bill A7245 and Senate Bill S5167. This legislation is an act to amend the not-for-profit corporation law, specifically the Land Bank Act. If approved, this act would allow the Buffalo Erie Niagara Land Improvement Corporation (BENLIC) to successfully bid on properties at the County's In Rem auction in October 2013. It would also allow BENLIC to include the City of Niagara Falls.

Should your Honorable Body require further information, I encourage you to contact Commissioner Maria R. Whyte at the Department of Environment and Planning. Thank you for your consideration on this matter.

Sincerely,

Mark C. Poloncarz, Esq.
Erie County Executive

By: Richard M. Tobe
Deputy County Executive

MCP/bb
Enclosure

cc: Maria R. Whyte, Department of Environment and Planning

MEMORANDUM

To:	Honorable Members of the Erie County Legislature
From:	Department of Environment and Planning
Re:	Home Rule Message: Assembly Bill A7245 and Senate Bill S5167 Buffalo Erie Niagara Land Improvement Corporation
Date:	May 20, 2013

SUMMARY

Home Rule Message for Assembly Bill A7245 and Senate Bill S5167, an act to amend the not-for-profit corporation law, specifically the Land Bank Act. The amendments allow the participation of tax act municipalities (like Erie County) in the Act. They also expand the number of Board seats allowable under the Act.

FISCAL IMPLICATIONS

None.

REASONS FOR RECOMMENDATION

Section 1616(i) of the Land Bank Act provides that:

> "notwithstanding any other provision of the law to the contrary, in the event that no municipality elects to tender a bid at a judicially ordered sale pursuant to the provisions of section eleven hundred thirty-six (1136) of the real property tax law (RPTL), the land bank may tender a bid at such sale in an amount equal to the total Amount of all municipal claims and liens which were the basis for the judgment. In the event of such tender by the land bank the property shall be deemed sold to the land bank regardless of any bids by any other third parties. The bid of the land bank shall be paid as to its form, substance, and timing according to such agreement as is mutually acceptable to the plaintiff and the land bank. The obligation of the land bank to perform in accordance with such agreement shall be deemed to be in full satisfaction of the municipal claim which was the basis for the judgment."

There are many foreclosing governmental units across the state which conduct In Rem tax foreclosures pursuant to a local or special law, as is the case in Erie County. In such cases, the judicially ordered sale is pursuant to a county charter, city charter, administrative code or special law, not the above referenced section 1136 of RPTL. It is necessary for section 1616(i) of the Land Bank Act to include counties, cities, and towns excluded from Article 11 of RPTL because of the existence of a Charter, Administrative Code or Special Law which authorizes the municipality to enforce the collection of delinquent taxes.

Additionally, the amendments increase the size of allowable Board members. This is important because the City of Niagara Falls has expressed strong interest in joining the Buffalo Erie Niagara Land Improvement Corporation.

BACKGROUND INFORMATION

In March 2012, the County of Erie and Cities of Buffalo, Lackawanna, and Tonawanda jointly submitted an application to the Empire State Development Corporation to establish the Buffalo Erie Niagara Land Improvement Corporation (BENLIC). Later that year, the application was approved and one of New York State's first land banks was formed.

CONSEQUENCES OF NEGATIVE ACTION

Assembly Bill A7245 and Senate Bill S5167 may not be approved, resulting in BENLIC being unable to bid on properties at Erie County tax foreclosure sales. This would greatly impair BENLIC's effectiveness at fighting blight in Erie County. It would also prevent BENLIC from working with the City of Niagara Falls.

STEPS FOLLOWING APPROVAL

A certified copy of this resolution will be sent to the New York State Assembly and Senate.

A RESOLUTION SUBMITTED BY:
ENVIRONMENT AND PLANNING

RE: Home Rule Message: Assembly Bill A7245 and Senate Bill S5167
Buffalo Erie Niagara Land Improvement Corporation

WHEREAS, Article 16 of the Not-for-Profit Corporation Law, namely the Land Bank Act, was signed by Governor Andrew Cuomo in July 2011; and

WHEREAS, section 1616(i) of the Land Bank Act provides that:

> "notwithstanding any other provision of the law to the contrary, in the event that no municipality elects to tender a bid at a judicially ordered sale pursuant to the provisions of section eleven hundred thirty-six (1136) of the real property tax law (RPTL), the land bank may tender a bid at such sale in an amount equal to the total Amount of all municipal claims and liens which were the basis for the judgment. In the event of such tender by the land bank the property shall be deemed sold to the land bank regardless of any bids by any other third parties. The bid of the land bank shall be paid as to its form, substance, and timing according to such agreement as is mutually acceptable to the plaintiff and the land bank. The obligation of the land bank to perform in accordance with such agreement shall be deemed to be in full satisfaction of the municipal claim which was the basis for the judgment;" and

WHEREAS, there are many foreclosing governmental units across the state which conduct In Rem tax foreclosures pursuant to a local or special law, as is the case in Erie County; and

WHEREAS, in such cases, the judicially ordered sale is pursuant to a county charter, city charter, administrative code or special law, not the above referenced section 1136 of RPTL; and

WHEREAS, it is necessary for section 1616(i) of the Land Bank Act to include counties, cities, and towns excluded from Article 11 of RPTL because of the existence of a Charter, Administrative Code or Special Law which authorizes the municipality to enforce the collection of delinquent taxes;

WHEREAS, the County of Erie and the cities of Buffalo, Lackawanna, and Tonawanda jointly applied for and were awarded a Land Bank in May 2012, which has been named the Buffalo Erie Niagara Land Improvement Corporation (BENLIC); and

WEREAS, section 1616(i) of the Land Bank Act must be changed to allow BENLIC to successfully bid on properties at the County's In Rem auction this October 2013; and

WHERES, the City of Niagara Falls has expressed interest in joining BENLIC; and

WHEREAS, the number of Board Members allowed under the Land Bank Act is limited to 11; and

WHEREAS, an expansion of the number of Board Members is necessary in order for BENLIC to accommodate the addition of the City of Niagara Falls.

NOW THEREFORE BE IT

RESOLVED, that the Erie County Legislature hereby goes on record in support of Assembly Bill A7245 and Senate Bill S5167, which Amend the Land Bank Act to address the issues discussed above; and be it further

RESOLVED, that the Clerk of the Erie County Legislature be directed to forward copies of this Home Rule Request, certified by the Clerk of the of the Erie County Legislature, as follows: two copies to the New York State Assembly and two copies to the New York State Senate.