

COUNTY OF ERIE

LOCAL LAW INTRO. NO. 9-1-2018

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A Local Law entitled the “Energize NY Benefit Financing Program Law of Erie County” in relation to establishing a sustainable energy loan program in Erie County.

Be it enacted by the Legislature of the County of Erie as follows:

Section 1 Legislative Findings, Intent and Purpose, and Authority

A. It is the policy of both the County of Erie (“County”) and the State of New York to achieve energy efficiency and renewable energy goals, reduce greenhouse gas emissions, mitigate the effect of global climate change, and advance a clean energy economy. The County finds that it can fulfill this policy by providing property assessed clean energy financing to property owners for the installation of renewable energy systems and energy efficiency measures. This chapter establishes a program that will allow the Energy Improvement Corporation (“EIC”), a local development corporation, acting on behalf of the County pursuant to the municipal agreement to be entered into between the County and EIC pursuant to Article 5-G of the New York General Municipal Law (the “Municipal Agreement”), to 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, thereby fulfilling the purposes of this law and fulfilling an important public purpose.

B. The County is authorized to implement this Energize NY Benefit Financing Program pursuant to the Municipal Home Rule Law and Article 5-L of the New York General Municipal Law.

Section 2 Definitions

For purposes of this law, and unless otherwise expressly stated or unless the context requires, the following terms shall have the meanings indicated:

Authority – 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.

EIC – the Energy Improvement Corporation, a local development corporation, duly organized under section fourteen hundred eleven of the Not-For-Profit Corporation Law, authorized hereby on behalf of the County to implement the Energize NY Benefit Financing Program by providing funds to qualified property owners (as defined in this law) and providing for repayment of such funds from monies collected by the County tax

collecting officer as a charge to be levied on the real property and collected in the same manner and same form as the County taxes.

Energy Audit – A formal evaluation or “assessment” of the energy consumption of a permanent building or structural improvement to real property, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of identifying appropriate energy efficiency improvements that could be made to the property.

Energy Efficiency Improvement – Any renovation or retrofitting of a 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, 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.

Qualified Property Owner – An owner of residential or commercial real property located within the boundaries of the County that is determined to be eligible to participate in the Energize NY Benefit Financing Program under the procedures for eligibility set forth under this law.

Renewable Energy System – An energy generating system for the generation of electric or thermal energy, to be used primarily at such property, except when the Qualified Property Owner is a commercial entity in which case the system may be used for other properties in addition to the subject property, 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.

Renewable Energy System Feasibility Study – A written study, conducted by a contractor certified by the Authority, or certified by a certifying entity approved by the Authority, for the purpose of determining the feasibility of installing a renewable energy system.

Section 3 Establishment of an Energize NY Benefit Financing Program

- A. An Energize NY Benefit Financing Program is hereby established by the County, whereby EIC acting on its behalf pursuant to the Municipal Agreement, may provide funds to Qualified Property Owners in accordance with the procedures set forth under this law, to finance the acquisition, construction and installation of Renewable Energy Systems and Energy Efficiency Improvements and the verification of the installation of such systems and improvements.
- B. 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.

- C. 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.

Section 4 Procedures for Eligibility

- A. Any property owner in the County may submit an application to EIC on such forms as have been prepared by EIC and made available to property owners on the website of EIC and at the County offices.
- B. Every application submitted by a property owner shall be reviewed by EIC acting on behalf of the County, which shall make a positive or negative determination on such application based upon the criteria for making a financing enumerated in section 5 of this law. EIC may also request further information from the property owner where necessary to aid in its determination.
- C. If a positive determination on an application is made by EIC acting on behalf of the County, the property owner shall be deemed a Qualified Property Owner and shall be eligible to participate in the Energize NY Benefit Financing Program in accordance with the procedure set forth under section 6 of this law; provided that in no case shall a property owner that has received funds from another municipal corporation for the acquisition, construction and installation of Energy Efficiency Improvements and/or Renewable Energy Systems be deemed a Qualified Property Owner.

Section 5 Application Criteria

Upon the submission of an application, EIC acting on behalf of the County, shall make a positive or negative determination on such application based upon the following criteria for the making of a financing:

- A. The proposed 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. The amount financed under the Energize NY Benefit Financing Program shall be repaid over a term not to exceed the weighted average of the useful life of Renewable

Energy Systems and Energy Efficiency Improvements to be installed on the property as determined by EIC;

- D. Sufficient funds are available from 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; and
- G. Such additional criteria, not inconsistent with the criteria set forth above, as the County, or EIC acting on its behalf, may set from time to time.

Section 6 Opt-in, Energize NY Finance Agreement

- A. A Qualified Property Owner may participate in the Energize NY Benefit Financing Program through the execution of an energize NY finance agreement made by and between the Qualified Property Owner and EIC, acting on the behalf of Erie County (the "Energize NY Finance Agreement").
- B. Upon execution of the Energize NY Finance Agreement, the Qualified Property Owner shall be eligible to receive funds from EIC acting on behalf of Erie County, for the acquisition, construction, and installation of qualifying Renewable Energy Systems and Energy Efficiency Improvements; provided the requirements of Section 7 of this law have been met.
- C. The Energize NY Finance Agreement shall include the terms and conditions of repayment set forth under section 8 of this law.

Section 7 Energy Audit, Renewable Energy System Feasibility Study

- A. No funds shall be made available for Energy Efficiency Improvements unless determined to be appropriate through an Energy Audit as defined in Section 2.
- B. No funds shall be made available for a Renewable Energy System unless determined to be feasible through a Renewable Energy System Feasibility Study as defined in Section 2.
- C. The cost of such Energy Audit and/or Renewable Energy System Feasibility Study shall be borne solely by the property owner but may be included in the financed amount if the work is approved.

Section 8 Terms and Conditions of Repayment

The Energize NY Finance Agreement between the Qualified Property Owner and EIC acting on behalf of the County, shall set forth the terms and conditions of repayment in accordance with the following:

- A. The principal amount of the funds paid to the Qualified Property Owner hereunder, together with the interest thereon, shall be paid by the property owner as a charge on their Erie County tax bill and shall be levied and collected at the same time and in the same manner as County property taxes, provided that such charge shall be separately listed on the tax bill. Erie County shall make payment to 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 the County.
- B. The term of such repayment shall be determined at the time the Energize NY Finance Agreement is executed by the property owner and EIC, provided that in no case shall the term exceed the weighted average of the useful life of the systems and improvements as determined by EIC acting on behalf of the County.
- C. The rate of interest for the charge shall be fixed by EIC acting on behalf of the County at the time the Energize NY Finance Agreement is executed by the property owner and EIC.
- D. The charge shall constitute a lien upon the real property benefited by the Energize NY Benefit Financing Program as set forth in Article 5-L of the General Municipal Law and shall run with the land. A transferee of title to the benefited real property shall be required to pay any future installments, including interest thereon.

Section 9 Verification and Report

- A. EIC shall be responsible for verifying and reporting to the County on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by such Program.
- B. The County shall verify and report on the installation and performance of Renewable Energy Systems and Energy Efficiency Improvements financed by the Energize NY Benefit Financing Program in such form and manner as the Authority may establish.

Section 10 Effective Date

This Local Law shall take effect upon passage by the Legislature.

Section 11 Severability

If any clause, sentence, paragraph, subdivision, section or part of this Local Law or the application thereof, to any person, individual, corporation, firm, partnership, entity or

circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this Local Law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

Sponsored By:

Legislator John Bruso