On Friday, February 21, 2020 Governor Cuomo released his 30-day amendments to the Executive Budget. The amendments included a new proposal, TED Part JJJ, on the siting of renewable energy facilities. The Association of Towns strongly opposes this legislation for a variety of reasons, including the manner in which it was done by unveiling it in the 30-day amendments, thus precluding us from analyzing the proposal and voicing our concerns in budget testimony. Major policy initiatives should not be included in the budget, and they certainly shouldn’t be introduced at the last minute to thwart public comment.

Quick Overview

Projects that are currently being reviewed under the Article X process could use this new procedure that “fast tracks” renewable energy siting procedures. The proposal would institute a new Article 23 of the Economic Development Law and create a new office, the Office of Renewable Energy Siting, under the Division of Economic Development. It would be responsible for issuing permits for renewable energy facilities, and a decision would have to be rendered within one year of the application being deemed complete. If the office does not make a decision within one year, the application would be deemed approved. Additionally, the proposal creates Title 9-B under the Public Authorities Law, which gives NYSERDA authority to take necessary steps to secure
permits, property interests and agreements to create “build-ready sites” for renewable energy projects. Priority is supposed to be given to brownfields, landfills, former commercial or industrial sites and abandoned or otherwise underutilized sites. Finally, there are modifications to taxing requirements. The proposal removes the Real Property Tax Law § 487(9)(a) requirement that the taxing jurisdiction notify a developer of its intent to require a PILOT agreement within 60 days of having received notice. Instead, NYSERDA would have to be consulted in developing PILOT agreements. Furthermore, if a town opts not to provide a tax exemption or enter into a PILOT agreement with wind or solar systems, assessment values will be determined by an income capitalization or discounted cash flow approach that includes: (i) an appraisal model identified and published by the Department of Taxation and Finance and NYSERDA; and (ii) a discount rate published annually by the Department of Taxation and Finance and NYSERDA.

**Bottom Line for Towns**

Although we support clean energy generally, the Association of Towns is strongly opposed to the new proposal and does not believe that renewable energy has to come at the expense of home rule and community involvement. While we are still reviewing the impacts of this proposed legislation, here are a few key points:

1. **Towns have little to no input.**

   Article X, while flawed, at the very least allowed for community involvement and town input. Applicants had to create a Public Involvement Plan; hold public statement hearings and trial-type evidentiary hearings; towns had intervener status and could use intervener funds for pur-
poses related to the proposed project.

TED Part JJJ has little to none of this. Towns could apply for funds from a local agency account although it’s unclear how these could be accessed. Even more alarming, there is no requirement to have a hearing unless the town can raise a “substantive or significant” issue that requires adjudication. It is unclear what constitutes a substantive or significant issue.

Others may point out that under TED Part JJJ, municipalities have to submit a statement indicating whether the proposed facility complies with applicable local laws concerning the environment, public health and safety. We believe that submitting a statement on a narrowly tailored topic is insufficient input and nothing akin to a public hearing.

2. **Notice requirements (or lack thereof).**

The Public Involvement Plan under Article 10 at least gave the community notice that an application may be coming. Under TED Part JJJ, it appears that municipalities will not be given notice of a project until after the Office of Renewable Energy Siting already approves a draft permit.

3. **Role of Local Laws.**

Under Article 10, the state siting board could issue a certificate for construction only if the project complied with local laws, so long as those laws were not unduly burdensome in view of existing technology, or the needs of or costs to ratepayers. Under the new proposal, the office may elect not to apply any local law that is unreasonably burdensome to the state’s clean energy goals. This new language significantly broadens the scope and ability to override local laws.

4. **Tax issues and undermining the ability to opt out and negotiate PILOTS.**

TED Part JJJ requires that NYSERDA be consulted in calculating PILOT payments for renewable energy projects. It is unclear whether a PILOT agreement may be entered into over NYSERDA’s objections, and AOT believes this wholly undermines the negotiating position of a town or IDA negotiating the agreement.

Furthermore, for towns that tax solar and wind farms (in other words, they choose to opt out of a PILOT agreement or providing tax-exempt status), they would have to assess property using an income capitalization or discounted cash flow approach that includes: (i) an appraisal model identified and published by the Department of Taxation and Finance and NYSERDA; and (ii) a discount rate published annually by the Department of Taxation and Finance and NYSERDA. This seemingly gives NYSERDA the authority to establish a
discount rate so low and an appraisal model that it essentially renders the assessment meaningless and curtails the ability to tax real property.

5. **TED Part JJJ encompasses more projects.**

This proposal reduces the megawatt threshold of projects that obtain a state permit from 25MWs to 10 MWs. Under Article 10, projects 25MWs or smaller had to go through local zoning and a State Environmental Quality Review Act (SEQRA) process. Thus, towns will no longer have authority over smaller renewable energy projects.

6. **Build-ready sites.**

As mentioned in the overview, NYSERDA may take necessary steps to secure permits, property interests and agreements to create “build-ready sites” for renewable energy projects with priority given to brownfields, landfills, former commercial or industrial sites and abandoned or otherwise underutilized sites. It is unclear how NYSERDA can take this property, will it be through an eminent domain procedure, and could NYSERDA take town property? Although the language says that priority will be given to brownfields, etc., it by no means limits NYSERDA’s ability to take property classified as such.

These are just a few of the issues we have immediately identified, and we will issue a more comprehensive comment on what the legislation does and our concerns within the next week. We have already gone on record with The Buffalo News, Politico and The Capitol Pressroom opposing this legislation and have reached out to legislators with our concerns. We strongly encourage you to reach out to your representatives with your thoughts on this proposal.

**AOT to Partner with NYCOM to Host Inaugural Local Gov Lobby Day**

Early last fiscal year as the budget became finalized and the dust settled on an abomination of an executive budget as far as revenue sharing was concerned, we resolved to not give up. Even though we may feel unseen and unappreciated as local governments, our work is important and mission is clear.

So, with the goals of informing our members of the budget issues that are affecting them, and to give voice to those that fight for us and share our burdens, we will partner with the New York Conference of Mayors to host our very first “Lobby Day,” this March 23rd at the Renaissance Hotel in Albany. Registration links will be emailed soon, and registration is FREE.

More details to come, so for now, just save the date for March 23.

Got it? March 23. Mark it. March 23 in Albany. With NYCOM and AOT. This March. 23. Ok. See you there!

**News Coverage of the Renewable Siting Plan Proposal**

- [https://www.lockportjournal.com/news/local_news/cuomo-power-play-ruffling-feathers/article_0a427ff9-a97e-52f9-9156-3c537df548ac.html?fbclid=IwAR1IzDthYoISuDu_1sYdiuLkXhJSUeMrjiK-Difjmg0NyZgT68PVOcavr](https://www.lockportjournal.com/news/local_news/cuomo-power-play-ruffling-feathers/article_0a427ff9-a97e-52f9-9156-3c537df548ac.html?fbclid=IwAR1IzDthYoISuDu_1sYdiuLkXhJSUeMrjiK-Difjmg0NyZgT68PVOcavr)
