

## **97<sup>th</sup> General Assembly Legislative Update and Monthly Spotlight–January 19, 2011**

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### *Legislative Update:*

January 12, 2011 marked the beginning of the 97th General Assembly. And although the Illinois Senate has yet to have bills of interest to this Legislative Update introduced, the Illinois House wasted no time.

HB 12, the SCH CONSTRUC-ENERGY EFFICIENCY bill introduced by Rep. Sandy Cole, would allow school energy efficiency grants to be made to special education cooperatives, and just not to school districts. The bill has been referred to the Rules Committee.

HB 26, the PROP TX-WIND ENERGY DEVICE bill introduced by Rep. Jim Sacia would alter the definition for a "wind energy device" which for taxable years 2007 through 2009 would mean any device with a nameplate capacity of at least 0.5 megawatts that is used in the process of converting kinetic energy from the wind to generate electric power for commercial sale, to a less limited definition for taxable year 2010 and thereafter to "any device", thus eliminating the nameplate capacity of at least 0.5 megawatts criteria during 2010 and moving forward. The bill has been referred to the Rules Committee.

HB 28, the PROP TX-GREEN ENERGY SSA bill introduced by Rep.s Lou Lang and Patrick J. Verschoore may be considered a new form of property assessed clean energy ("PACE") program. The bill would amend the Illinois Finance Authority ("IFA") Act by authorizing the IFA the power to purchase special service area bonds, and accept assignments, pledges, or agreements thereof relating to public and private green special service area projects. It would also amend the Special Service Area Tax Law authorizing counties or municipalities the ability to establish green special service areas ("Areas") which includes property for which each owner consents to such inclusion. Included property owners may then arrange for specific energy efficiency improvements, renewable energy improvements, or water use improvements, and financing the improvements through a process set forth in the ordinance establishing the Area. Counties and municipalities may then levy property taxes on such included property to pay for the improvements. The bill has been referred to the Rules Committee.

HB 157, the UTIL-REMOVE BAN-NUCL CONST bill introduced by Rep. JoAnn D. Osmond would delete from the Public Utilities Act the language that restricts construction on new nuclear power plants in Illinois until an acceptable technology or means for the disposal of high level nuclear waste is determined, or until such construction has been specifically approved by a statute enacted by the General Assembly. Depending how this bill progresses, it could give rise to new nuclear construction plants in Illinois. The bill has been referred to the Rules Committee.

HB 166, the HIGHER ED-GREEN JOBS & TECH bill sponsored by Rep. Dave Winters would create the University Green Jobs and Technology Act. This measure aims at greatly boosting the emphasis of green job training in Illinois universities by requiring in part the following: green jobs certificate and degree programs offered by each State university be uniformly named; provide Internet posting of efforts made by State universities to promote the green technology industry; publication of every green jobs course and green jobs certificate and degree program offered by State universities; and an annual meeting among State universities and their research centers located within the same geographic regions to develop collaborative efforts with regard to the green technology industry. The bill has been referred to the Rules Committee.

HB 185, the USE/OCC TAX-FLEX FUEL VEHICLES bill introduced by Rep. Donald L. Moffitt would amend the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act. The bill would exempt from taxation under these Acts new flexible fuel vehicles, new hybrid vehicles, and new electric vehicles for 10 years, but to qualify for these exemptions, the vehicle's final assembly point must be located within Illinois. The bill has been referred to the Rules Committee.

*Spotlight: The New Forms of Property Assessed Clean Energy.*

The beginning of 2010 held great potential and enthusiasm for property assessed clean energy ("PACE"). PACENow.org describes PACE as a local government initiative that allows property owners to finance energy efficiency and renewable energy projects for their homes and commercial buildings, and being paid through an assessment on their property taxes for up to 20 years. The potential of PACE was overshadowed by a July 6, 2010 Federal Housing Finance Agency Statement. "After careful review and over a year of working with federal and state government agencies, the Federal Housing Finance Agency (FHFA) has determined that certain energy retrofit lending programs present significant safety and soundness concerns that must be addressed by Fannie Mae, Freddie Mac and the Federal Home Loan Banks."

Almost immediately state and local governments attempted to overcome the challenge imposed by FHFA through various legislative actions. For instance, the State of Michigan passed 2010-PA-0270 introduced by then State Representative Rebekah Warren, now State Senator. In it, the Public Act authorizes local units of government to adopt property assessed clean energy programs and to create districts to promote the use of renewable energy systems and energy efficiency improvements by owners of certain real property; providing for the financing of such programs through voluntary property assessments. But here, "property" means privately owned commercial or industrial real property, unlike many of the initial PACE programs implemented throughout the country which also permitted residential property to be included in the definition.

Despite this change, the voluntary nature of the assessment may give lender basis to challenge the lien. Most commercial loans have provisions that prohibit the borrower

from “further encumbering the property” without consent. Most commercial mortgages have a Due on Encumbrance clause that gives the mortgage-holder the right to call the loan due if additional debt is placed on the property without the lender’s consent. Whether the voluntary inclusion into a green special service area as outlined in HB 28, discussed in this Legislative Update, in which the owner consents to such inclusion may pose a similar challenge to the restrictions on further encumbrances by most mortgage-lender agreements will have to be studied carefully.

For additional information concerning the content of this Legislative Update and Spotlight, or for any additional information, contact Sean C. Ziadeh: [\(248\) 320-3208](mailto:seanziadeh@hotmail.com).