

N.Y. Budget Could Devalue Local Renewable Energy Projects

Julie Abbass, Watertown Daily Times (April 3, 2023)

Proposed legislation tucked deeply in the folds of Gov. Kathy Hochul's Executive Budget would sidestep an in-process case in Albany County Supreme Court that has temporarily frozen the real property value appraisal model for renewable energy projects the state created to "incentivize" more renewable energy projects.

Use of the new model will be mandatory and is expected to negatively impact local municipal revenue from established projects. North country officials, like many others around the state, have been aligning with the towns and taxpayers of Schoharie County that started the lawsuit.

Lewis County and towns hosting operational wind and solar projects have agreements in place that allowed renewable energy companies to make payments based on a dollar amount per megawatt of energy produced — officially, a "payment in lieu of taxes" commonly called a PILOT — instead of property taxes based on an assessed value.

Traditionally, the companies preferred this option because assessments that take into consideration "real value" make potential tax payments larger than PILOT agreements.

If Part N revenue legislation proposed in the state's budget is finalized, that could change.

"The way PILOTS are designed in New York State is that it is purely an option. Any party at any time — the IDA (Industrial Development Agency which negotiates PILOT agreements), the municipalities or the property owner — can say, 'I don't want a PILOT. I just want to be assessed like everybody else.' If that formula is less than the PILOT amounts we have agreed to then they are going to opt to go to the state-mandated assessment, and that's where it has the potential to cost us a lot of money," said Lewis County Manager Ryan M. Piche.

That would mean the PILOT payments already calculated into both annual budgets and long term financial planning like debt payments, budgets for schools, towns and counties in renewable energy project areas could disappear and revenue decreased in an instant. The result would likely be an increase in taxes in those jurisdictions or a loss of services.

To get a sense of what that means, Lewis County Real Property Director Candy C. Akin calculated her county's oldest renewable project — Maple Ridge Wind Farm, also known as Flat Rock Wind Farm — with the state's model finding the value would decrease by 31 percent.

For Copenhagen Wind Farm, a much newer project, that value decrease would be 78 percent, which would make a county tax bill roughly \$23,000 lower than the county's share of the current PILOT payment.

Town of Denmark Supervisor Scott Doyle said town tax payers would be hit doubly with a direct loss of revenue that could delay or re-prioritize planned services and, because fire protection district payments by the energy companies are calculated with the assessed value, the new appraisal model will create a budget deficit for fire departments that taxpayers will have to absorb.

How Did We Get Here

Ms. Akin and Mr. Doyle have been following the repercussions of a state Real Property Tax Code addition created via the budgeting process in 2021, known as 575b, that allowed the state Department of Taxation and Finance "in consultation with the New York State Energy Research and Development Authority (NYSERDA)" and input by the state Assessors Association, to create and publish a "discounted cash flow" appraisal model and produce discount rates annually with a public comment period with each new rate publication.

While the Assessors Association was initially part of the discussion along with county directors and a number of appraisers, that changed.

"As they got push-back from different people, they then decided they were just going to finish it out working with NYSERDA because, obviously, our end of it was more to come up with the true value of these projects and their goal is to incentivize the value of these projects so more are built," Ms. Akin said.

The result was published as the "Final solar and wind appraisal methodology" in Oct. 2021 slated for use for all assessments last year, but in Jan. 2022, the Taxation and Finance Department published a "revised model" according to documents filed in the court case in December denying the Attorney General's request to throw out the law suit.

Five towns and two tax payers in Schoharie County filed the case against the Taxation Department Taxation commissioner based on the fact that the laws that govern rule making procedures were not followed for the new model.

The state maintains the models are not "rules" and therefore do not have to follow the state Administrative Procedure Act process.

The case is technically ongoing but Part N changes 575b so that the appraisal model can be updated "without regard to the Administrative Procedure Act." It also amends the procedure act directly to include appraisal models and discount rates in the list of other real property tax law rates that are exempt from the definition of "rules."

Ultimately, Part N allows the Taxation and Finance Department commission to "readopt" the 2022 model and rates for use this year with no further consultation or public comment and because it is written to be retroactive to 2021, making the ongoing litigation irrelevant.

The Effort to Get Part N Dropped

The first goal for municipalities statewide is to get Part N removed from the budget so the issue can be decided at least in part in court. "This is about standing up for home rule. It's about standing up for our community's right to determine our development future. They have already usurped and overrode local zoning through the 94-C (siting) process," said Mr. Piche, "The state is saying they know better than home communities — that their climate goals are more important than the development and self-government of the northern New York community."

Mr. Doyle and Martinsburg Supervisor Terrence J. Thisse attended the Finance and Rules Committee in Lewis County in March to ask for the county's support of their intention to join the next law suit as individuals if municipalities are found not to be eligible to be part of the next case — not to have standing — by helping with legal costs. One legislator, Phil Hathaway said he would be willing to join the supervisors as an individual complainant.

The county board is expected to approve a resolution in their meeting on Tuesday "vehemently opposing" Part N and asking Governor Hochul to "examine the financial impacts" of the measure.

Five town representatives including Mr. Thisse and Mr. Doyle, Mrs. Akin, three legislators and the executive director of the county IDA, Brittany Davis, met with state Sen. Mark Walczyk and Brian Peck of Assemblyman Kenneth Blankenbush's office to discuss this issue and urge them to help get Part N removed, especially with Mr. Walczyk's position on the senate's finance committee.

Representatives for Mr. Walczyk and Mr. Blankenbush did not return calls or emails on the topic.

Mr. Doyle said the towns have been discussing a zoning moratorium on renewable energy projects "to send a message" to the state, acknowledging that the state could and likely would override those rules for the large-scale projects, but smaller projects might make the effort felt.