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2021 Joint Legislative Budget Hearing on Taxes
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TESTIMONY of
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Thank you for the opportunity to provide testimony on the proposed Executive Budget on behalf of the Alliance for Clean Energy New York, ("ACE NY").

ACE NY is a broad coalition dedicated to promoting clean energy, energy efficiency, electrified transportation, a healthy environment, and a strong economy for the Empire State, and is New York's premier advocate for the rapid adoption of renewable energy and energy efficiency technologies. Our members include renewable energy and energy efficiency companies, including companies that are currently operating renewable energy facilities in New York, such as hydropower and wind facilities, and those pursuing opportunities to invest in New York to build new land-based wind and offshore wind, community solar and grid-connected solar, fuel cells, and transmission. We also have member companies that manufacture electric vehicles or electric vehicle charging infrastructure. You can learn more about ACE NY at www.aceny.org.

This testimony specifically addresses Renewable Energy Taxation in Part X of the Executive Proposed Revenue Budget Article VII Bill (S.2509/A.3009). ACE NY has also submitted written testimony before the Transportation Budget Hearing on policies necessary to electrify transportation and reduce emissions. Also, ACE NY submitted written testimony before the Environmental Conservation Budget Hearing on the following areas:

- Renewable energy permitting, as addressed in Part Q of the Executive Proposed Transportation, Economic Development and Environmental Conservation (TED) Budget Article VII Bill (S.2508/A.3008);
- NYSERDA's "Build Ready" Program, as addressed in Part EE of Proposed TED Budget Article VII Bill (S.2508/A.3008); and
- The need for energy efficiency legislation.

On January 19, Governor Cuomo delivered his fiscal 2021-22 budget proposal and speech to the Legislature, which outlined state spending and legislative priorities to rebuild New York in the context of the ongoing COVID-19 pandemic. ACE NY was pleased that the Governor's budget presentation highlighted the need to address climate change and promote a green economy to spur economic recovery with $29 billion in investments allocated to large scale renewable energy projects, port infrastructure to support the offshore wind industry, and new transmission, among others. These investments ensure that the state makes progress towards the ambitious economy-wide greenhouse gas emissions and renewable energy goals of New York's climate law, the Climate Leadership and Community Protection Act (CLCPA). They will also make our grid more modern, secure, and safe. Recent events in Texas have underscored the importance of a secure grid.

As you all know, New Yorkers have direct experience with the devastating effects of climate change. Over the past decade, New York State has seen more extreme weather events than any other time in its recent history. "Climate Change is the defining issue of our time and we are at a defining moment," according to the United Nations[i]. Tens of thousands of scientists warn that the planet, in their words, "clearly and unequivocally…is facing a climate emergency."[ii] The impacts of climate change are extraordinary in scale and will be felt around the planet. Without sweeping action today, adapting to these impacts in the future will be more challenging and costly.

ACE NY believes that transitioning to renewable sources of electriciy is one of the best strategies in the fight against climate change. Moreover, a 2020 *Rewiring America* report[iii] explains that it is possible to eliminate 70 percent to 80 percent of US carbon emissions by 2035 through rapid deployment of existing electrification technologies, with little-to-no carbon capture and sequestration. This deployment would cut US energy demand by around half, save consumers money, and keep the US on a pathway to limiting warming to 1.5-degree, without requiring specific behavior changes. Yes, we can still have our homes and cars — they would just need to be electric. *Rewiring America* reinforces that cleaning up the electricity system solves much of the problem. It allows us to electrify our transportation and building sectors and parts of heavy industry, which would address more than 70 percent of total emissions.

The way we clean up the electricity grid is to build renewable energy projects - i.e., wind and solar – both land-based and offshore wind, and both grid-scale and rooftop or community solar. To get these projects built, the private project developers need several elements: a long-term contract of some sort; a permit to build; an interconnection agreement with the grid operator; and a taxation agreement at the local level. My testimony today is about this last of these four critical elements: the tax agreement.

The Legislature has a stake in the successful achievement of the CLCPA's very, very ambitious, but achievable, goals. Given that the law is so broad and economy-wide and greenhouse gas emissions are so ubiquitous, you may believe that I'm simplifying things to say that building wind and solar projects is the single most important thing we can be doing in the short term, but in fact, it's true. To reduce emissions from the electric sector, you need more renewable power plants. To meet the goals in the law for offshore wind, for distributed solar, and for 70% renewable electricity by 2030, NYS needs more wind and solar. We will reduce emissions from transportation and heating – the other two major sectors -- by electrifying vehicles and heating, but only if that electricity comes from renewables. Further, it takes years to develop a renewable energy project -- from land acquisition to public outreach, permitting and interconnection to financing and construction – and those processes need to be embarked on as soon as possible for as many projects as possible, so that we can collectively and gradually move closer to the law's 2030 and 2050 mandates.

Provision related to Renewable Energy Taxation (Part X): ACE NY strongly supports Part X of the Executive Budget which directs the State to publish a standard methodology for the assessment of wind and solar projects, while still leaving municipalities the flexibility to negotiate Payments in Lieu of Taxes (PILOT) agreements. The great majority of projects are taxed via PILOT agreements. Similar text was in last year's original Executive Budget proposal for the Accelerated Renewable Energy Growth and Community Benefit Act. (That legislation addressed permitting reform and transmission planning, but the language relating to the taxation of renewable energy that was removed during the legislative negotiations.)

Specifically, Part X of the Revenue Bill amends the Real Property Tax Law (Sections 487 & 575-a) and General Municipal Law (Sections 852, 854, 858 & 859-a) to direct the New York State Tax & Finance Department to publish a standard methodology for real property tax assessment in consultation with NYSERDA. It also makes it clear that renewable energy is among the types of economic development that Industrial Development Agencies have the authority to support.

ACE NY cares about the taxation of renewable energy because the local process to negotiate property tax agreements with at least three separate jurisdictions – town/city/village, county and school district – can currently take up to two or more years. By providing a standard methodology for assessing wind and solar projects – which are unique land uses for which there is currently no agreement on appropriate tax approach -- New York's towns, counties, and IDAs will have a consistent foundation on which to make decisions about taxation.

It is important to note that nearly all wind and solar projects in New York are taxed via Payments in Lieu of Taxes (PILOT) agreements, and this bill would maintain the flexibility for communities to continue to use the PILOT approach if they would like. In some cases, community members object to a PILOT being used, in the belief that this is an unfair subsidy for renewable energy projects. In fact, it is the vehicle by which these projects *pay* their taxes, not necessarily a tax break. In these situations, the local government may then look around to determine what "full" taxation would be, but there is not State guidance and very little precedence on which to base this. Wind and solar are unique land uses. One cannot simply compare properties like you would for a commercial building or home. And the amount of revenue that a project can expect is not the same for even a similarly sized project, in that it depends on the power prices in that area; how windy or sunny it is; and other factors.

These projects are large capital projects with a major expense for equipment purchase and construction, and then low operating costs over time. The most appropriate method of assessment is the discounted cash flow approach.

Another approach to this problem would be for the Legislature to establish a set PILOT amount in dollars/megawatt-installed that would vary by region and apply to any project in New York. This would work well for project developers. But, our understanding is that the municipal associations and the assessor's association prefer the proposed approach rather than a standard PILOT payment established in law. First, it maintains a municipality's option to either not tax a project (i.e. *not* opt out of the RPTL 487 tax exemption for municipalities); or use traditional full assessment; or negotiate a PILOT. Second, it is the more traditional approach in that NYS Tax and Finance would provide this guidance to the local taxing jurisdictions. For example, It NYS law includes a specific method for assessing and taxing the oil and gas industries, and so establishing this in law for wind and solar projects would not be out of the ordinary.

There are, as mentioned above, several other provisions in Part X. One would direct renewable energy projects to report on tax payments to NYS Tax and Finance to inform their work under Part X (i.e. their development of the assessment methodology and discount rates.) A second would amend the General Municipal Law that applies to Industrial Development Agencies to list 'renewable energy development' among the types of economic development that they are authorized to support via the negotiation of PILOT agreements. I note that many IDAs have and are already negotiating PILOTs with solar and wind projects, but this language would simply recognize renewable energy development as an economic policy goal of the State of NY.

I also want to highlight one change between last year's proposal and this year's. The previous proposal directed Tax and Finance to use *either* the discounted cash flow or income capitalization method. This year's proposal specifies the discounted cash flow method. We support this change. There are three important impediments to utilizing income capitalization for the valuation or assessment of clean energy projects: (i) Capitalization factors for renewable energy projects do not have public comparables and any assumed capitalization factor would necessarily reflect a high degree of subjectivity on part of the assessor; (ii) Income capitalization assumes steady and increasing cash flows over a discrete period, which is not necessarily true or accurate for renewable projects; (iii) Income capitalization assumes that a "single period" of income is representative of all income received for the asset life, which is not necessarily true or accurate for renewable projects, as these projects are heavily weighted in expenses in the first few years. Conversely, the discounted cash flow method is the prevailing industry standard for valuation of clean energy projects of all types and sizes, with well-established inputs and assumptions for valuation/assessment purposes.

Conclusion

Thank you for the opportunity to provide input on an aspect of the Executive Budget related to taxation of renewable energy. In sum, ACE NY and the renewable energy industry enthusiastically supports Part X, and believes it strikes the right balance between providing certainty and standardization to both communities and renewable energy development companies, while still allowing local governments and industry the option to negotiate PILOT agreements. We very much hope and respectfully request that both houses of the Legislature include Part X in their one-house budget bills and support this initiative in the final Budget for 2021-2022.

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[i] https://www.un.org/en/sections/issues-depth/climate-change/

[ii] https://academic.oup.com/bioscience/article/70/1/8/5610806

[iii] https://www.rewiringamerica.org/jobs-report