



Green Strategies Bulletin



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Ohio SB 232 Expands Solar Special Improvement District Financing to include other Renewable and Advanced Energy Projects

On June 4, 2010, in a much anticipated action, the Ohio General Assembly enacted Senate Bill 232 (SB 232) which expands the Special Improvement District (SID) law in Ohio (O.R.C. Chapter 1710). Solar Energy SIDs, including solar photovoltaic and solar thermal systems had been authorized by Ohio House Bill 1, passed on July 17, 2009. The new law now also includes a wide array of renewable and advanced energy options.

SB 232 was sponsored by Senator Chris Widener (R-Springfield) and reforms the tax code for renewable and advanced energy generators utilizing technologies such as wind, solar, cogeneration and clean coal. Incorporated into SB 232 was Senate Bill 223, sponsored by Senator Jimmy Stewart (R-Albany), which provides for renewable and advanced energy SIDs (Special Energy SID). For more information on the tax code reforms contained in SB 232, please click on this link: <http://www.bricker.com/documents/publications/1929.pdf>.

Under the previous SID law limited to solar, a municipality or township could create a SID to facilitate the financing of solar photovoltaic and solar thermal systems through the levy of a special assessment on the real estate tax bill of any consenting, participating property owner.

Under the new law, geothermal energy projects, “customer-generated energy projects” including wind energy, geothermal energy, gasification, biomass, as well as energy efficiency technologies, can be financed by a SID supported through the levy of a special assessment. Also, the new law has extended the time period over which these systems can be financed from 25 years to 30 years.

Renewable and Advanced Energy Projects

By providing authorization of renewable and advanced energy programs, Ohio puts itself at the forefront of states that have passed laws known nationally as “Property Assessed Clean Energy” (PACE). Special Energy SIDs will provide municipalities and townships with the flexibility to offer a full range of renewable and advanced energy options to help reduce the cost of energy to their citizens and property owners.

Special Energy SIDs can now take advantage of the wider scope of the law to include “energy efficiency improvements” and “customer-generated energy projects.” “Energy efficiency improvement” is defined broadly to include “technologies, products, and activities that re-

duce or support the reduction of energy consumption, allow for the reduction in demand, or support the production of clean, renewable energy and that are or will be permanently fixed to real property.”

A “customer-generated energy project” includes wind, biomass, or gasification facilities for the production of electricity that meets either of the following requirements:

- (1) The facility is designed to have a generating capacity of 250 kilowatts of electricity or less.
- (2) The facility is:
 - Designed to have a generating capacity of more than 250 kilowatts of electricity;
 - Operated in parallel with electric transmission and distribution facilities serving the real property at the site of the customer-generated energy project;
 - Intended primarily to offset part or all of the facility owner’s requirements for electricity at the site of the customer-generated energy project and is located on the facility owner’s real property; and
 - Not producing energy for direct sale by the facility owner to the public.

Thus, under the new law, special assessment financing can be utilized for a solar photovoltaic or solar system regardless of size or whether it is on the customer or utility side of the meter. With respect to the other technologies, this financing can be used for projects of any size on the customer side of the meter, or projects up to 250kw on the utility side of the meter.

Energy Efficiency and Peak Demand Requirements

The new law provides that for non-mercantile customers, the utilities may count any efficiency savings or reduction in demand produced by a SID located in the utility’s certified territory toward the utility’s compliance with its energy efficiency and peak demand reduction requirements mandated by Ohio law (O.R.C. 4928.66). Mercantile customers that realize energy efficiency savings or reduction in demand produced by its participation in a SID may elect to commit the savings or reduction to the electric dis-

tribution utility in exchange for an exemption from an energy efficiency cost recovery mechanism, as approved by the public utilities commission of Ohio. Unless the mercantile customer agrees, the utility would not be able to automatically count the energy savings towards its requirement.

To facilitate this process, SB 232 provides that the board of directors of the SID must submit a quarterly report to the utility providing for the total number and a description of each new and ongoing project located within the SID that produces energy efficiency savings or reduction in demand. Any additional information that the electric distribution utility needs in order to obtain credit for energy efficiency savings or reduction in demand from such projects must be provided.

Aggregation of RECs

Special Energy SIDs are now expressly authorized to aggregate renewable energy credits generated by renewable and advanced energy projects in the SID financed by special assessments (upon consent of the owners of the credit) to help negotiate the sale of those RECs.

Creating a Special Energy SID

In order to implement a of renewable and advanced energy program, a municipality or township must create a Special Energy SID to facilitate the financing. Some practical steps to establishing a Special Energy SID are as follows:

- **Get the Word Out:** The municipality or township communicates the availability of this new renewable and advanced energy program to the property owners within their community.
- **Circulate SID Petition:** Property owners that want to participate will need to sign a “petition.” The municipality, township or the property owners will develop a “form” petition to be filled out by participating property owners.
- **Property Owners Choose Renewable and Advanced Energy Projects:** The petition contains an “initial plan” that outlines the renewable and advanced energy projects the

participating property owners want to install on their homes and property. The municipality or township may pre-qualify a list of renewable and advanced energy manufacturers and installers.

- **Determine Assessment Amount:** The petition acts as a request that the municipality or township levy a special assessment on the participating property owners' real property to pay the costs of their renewable and advanced energy project. The municipality or township will need to determine how much each renewable and advanced energy project will cost in order to set the assessment amounts in the petition. See "Project Financing" below.
- **Approve Special Energy SID:** The municipality or township must, by ordinance or resolution, approve the SID petition and levy the assessment specified in the petition.
- **What Else?** The municipality or township will cooperate with the SID board of directors to carry out the renewable and advanced energy program. The municipality or township may be involved in choosing renewable and advanced energy manufacturers and installers and collecting the special assessment.

A Special Energy SID is unlike a traditional SID in that the property included within the SID can be from different parts of a municipality or township and does not have to be contiguous. Also, unlike a traditional SID, a Special Energy SID requires the consent of 100 percent of the property owners who will be assessed for the costs of their renewable and advanced energy projects. A property owner who does not want to be involved in a renewable and advanced energy program cannot be compelled to join a Special Energy SID.

Financing a Renewable and Advanced Energy Project

Municipalities and townships have several options at their disposal to finance renewable and advanced energy projects. A municipality or township, in cooperation with a Special Energy SID, can levy a special assessment on participating property owners' real property for up to 30 years. This method allows each

participating property owner the ability to finance a new solar photovoltaic, solar thermal, wind, geothermal, gasification, biomass, and energy efficiency technologies and systems, in installments. Financing and administrative costs of the Special Energy SID, if any, can be included within the assessment paid for by the participating property owners.

Special assessment revenue may be used to pay the debt service on "special obligation" revenue bonds, the proceeds of which may be used to pay for renewable and advanced energy projects and renewable and advanced energy program costs. Alternatively, "general obligation" bonds may be available for financing renewable and advanced energy projects.

Federal Investment Tax Credits are Available for Renewable and Advanced Energy Projects

Participating property owners who own a qualifying renewable and advanced energy project may be eligible for a federal investment tax credit equal to 30 percent of the eligible costs of their project. Alternatively, for projects placed in service in 2010, participating property owners may elect a 30 percent grant equal to and in lieu of the investment tax credit.

For a credit or grant to apply, Special Energy SIDs, municipalities and townships need to structure their renewable and advanced energy programs so that each renewable and advanced energy project is transferred to the participating property owner after a special assessment is levied but before the solar energy project is "placed in service." The SID statute contains flexibility that allows renewable and advanced energy programs to include federal investment tax credits and grants for participating property owners.

Renewable and Advanced Energy Programs May Be An Attractive Option for Municipalities and Townships

Renewable and advanced energy programs carry significant, measurable environmental benefits and may be attractive to Ohio municipalities and townships wishing to attract green businesses or green development or to provide a diverse set of energy options within their communities. A Special Energy

SID can be created at little or no cost to a municipality or township, and community participants may see a significant decrease in their long-term overall energy costs.

Bricker & Eckler's energy and public finance attorneys assisted in drafting SB 232 authorization of municipal and township renewable and advanced energy programs. In addition, the firm has helped create many SIDs in the state.

For more information about developing a Special Energy SID for your municipality or township, please contact one of the attorneys listed or visit our Special Energy SID and PACE resource center at <http://www.bricker.com/services/resource-details.aspx?resourceid=409>.

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