Summer 2010 www.ssd.com

Bill Provides Options for Community Alternative Energy Projects

Amended substitute Senate Bill 232 (Am. Sub. SB 232), signed by Governor Ted Strickland June 17, 2010, provides additional options for municipalities, and in certain circumstances townships, to assist property owners in providing alternative energy projects in their communities.

Municipal Alternative Energy Revolving Loan Programs

Expanding on provisions originally enacted in 2009 for residential solar panels, Revised Code Section 717.25 now provides that a municipality may establish an alternative energy revolving loan program to assist property owners (not just residents) with installing on their property (i) certain solar photovoltaic projects, solar thermal energy projects, geothermal energy projects and customer-generated energy projects (certain wind, biomass or gasification facilities for the generation of electricity); or (ii) energy efficiency technologies, products and activities that reduce or support the reduction of energy consumption, allow for the reduction in demand or support the production of clean, renewable energy.

In order to establish an alternative energy revolving loan program, a municipality needs to adopt an ordinance that:

1. creates an alternative energy revolving loan fund in the municipal treasury;

Squire Sanders continues to be one of the leading public finance firms in the nation, ranked 4th nationally as bond counsel for 2009 by Thomson Financial, with issues totaling more than $11.3 billion.

In addition to bond counsel services, Squire Sanders also provides many other legal services to Ohio public sector clients, including economic development, tax increment financing, legislative counseling, special assessments, intergovernment and development agreements, real estate, construction and contracting, brownfields, environmental, litigation, labor, tax and employee benefits. For more information about Squire Sanders, click here.

Ohio Offices

Cincinnati
513.361.1200

Cleveland
216.479.8500

Columbus
614.365.2700

Contacts:

Jeffrey A. Bomberger

Victoria Grunthaner Bowser

Alexander G. Burlingame

2. provides a source of money to seed that fund;

3. establishes facilities criteria, procedures and terms and conditions for making loans from that fund;

4. specifies that property owners may repay loans in installments, which may be paid and collected as if they were special assessments;

5. specifies that loan repayments and investment earnings are credited to that fund; and

6. establishes other measures that are necessary for the proper operation of the program to encourage alternative energy and energy efficient technologies.

Interest rates charged on loans from the alternative energy revolving loan program must be *below* prevailing market rates.

Municipalities providing loans under an alternative energy revolving loan program are required to submit quarterly reports to the for-profit electric distribution utility detailing the projects for which loans were made and any other information needed by that utility in order to obtain credit for energy efficiency savings or reduction in demand from such project.

Special Improvement Districts for Special Energy Improvement Projects

Am. Sub. SB 232 expanded the scope of provisions relating to a special improvement district (SID) established for a special energy improvement project. Traditional SID projects in municipal corporations and townships consist of "public improvements" for which special assessments could be levied (see our Fall 2006 Ohio Public Law Update for a description of a traditional SID in a municipality). In 2009 Revised Code Chapter 1710 was amended to provide that a "public improvement" under Chapter 1710 also includes a special energy improvement project. Pursuant to those amendments, a SID could be formed to undertake special energy improvement projects (a "special energy SID") that generally included property or equipment necessary for the acquisition, installation and improvement of real and personal property used for certain solar projects. Moreover, unlike traditional SIDs, a special energy SID need not consist of contiguous property (i.e., property may be located anywhere in the district) and a petition to form a special energy SID must be signed by 100 percent of the property owners to be included in the district.

Similar to the changes to the municipal alternative energy revolving loan program described above, Am.

Ryan K. Callender
Margaret W. Comey
Todd L. Cooper
Timothy J. Cosgrove
Michael A. Cullers
Gregory R. Daniels
Mary C. Daugherty
Ernie K. Demanelis
Robert J. Eidnier
Roberta L. Fisher
Christopher J. Franzmann
D. Bruce Gabriel
L. Todd Gibson
David S. Goodman
Pamela I. Hanover
Barbara L. Hawley
F. Barry Keefe
Robert D. Labes
John S. Larson
Richard D. Manoloff
Austin McGuan
J. Seth Metcalf
Katherine G. Petrey
Catherine Ziroli Romanchek
Matthew L. Sagone
Paul F. Sefcovic
Michael L. Sharb
Alex Shumate
Jordan G. Snow
Louis Stokes
Gregory W. Stype
Catherine C. Tompkins
Dana B. Weiss

Sub. SB 232 expanded the projects for special energy SIDs to allow for geothermal energy projects, customer-generated energy projects and energy efficiency improvements in addition to solar projects.

Other changes to special energy SIDs effected by Am. Sub. SB 232:

- The number of years for which special assessments may be levied for a special energy project is extended from 25 to 30 years.
- With the consent of the owners of the credits, a SID may aggregate renewable energy credits generated by special improvement projects within the SID for the purpose of selling those renewable energy credits.
- Similar to the duties imposed on a municipality under the revolving loan program, the board of directors of a SID is required to submit quarterly reports to the for-profit electric distribution utility providing certain details regarding special energy improvement projects within the SID and any other information needed by that utility in order to obtain credit for energy efficiency savings or reduction in demand from such project.

Ohio Supreme Court Rules on When a Wrongfully Rejected Bidder on a Public Improvement Project May Recover Bid-Preparation Costs

The Ohio Supreme Court recently ruled in *Meccon, Inc. v. Univ. of Akron* (Slip Opinion No. 2010-Ohio-3297) that a rejected bidder on a public improvement project under certain circumstances may recover reasonable bid-preparation costs as damages. The plaintiff contractor alleged that the University of Akron violated state competitive bidding laws in rejecting its bid. The contractor filed an action in the court of claims seeking to enjoin the awarding of the contract to another bidder, but its motion was rejected. On appeal, the Court, in a 6-0 ruling, held that a bidder could recover the bid-preparation costs if: (i) the public authority violated state competitive-bidding laws in awarding the contract; (ii) the bidder promptly sought, but was denied, injunctive relief; and (iii) the bidder's bid was wrongfully rejected and injunctive relief is no longer available. The Court distinguished and reaffirmed its 2006 decision in *Cementech, Inc. v. Fairlawn* in which the Court ruled that a wrongfully rejected bidder could not recover lost profits as damages under any circumstances.

Squire Sanders represents a number of governmental entities as construction counsel and in construction litigation. Our lawyers are available to consult on any public improvement issues you might have.

Recent Legislation of Interest

Amended Substitute Senate Bill No. 110, effective September 17, 2010, requires the Ohio Public Health Council to adopt new rules governing sewage treatment systems and establishes parameters for those rules. The new rules will apply to small flow on-site sewage treatment systems as well as household septic systems and may not take effect prior to January 1, 2012. Those rules must establish a preference for the repair of an existing system, when technically and economically feasible, rather than its replacement with a new system.

The Bill further provides that a sewage treatment system that was in operation prior to the effective date of the Bill cannot be required to be replaced unless it is causing a defined public health nuisance, in which case repairs to the existing system are to be permitted if they will eliminate the nuisance.

The Bill also authorizes boards of health to adopt rules governing sewage treatment systems that are more stringent than the rules of the Public Health Council, subject to certain restrictions, although boards of health must consider and document the economic impact of their rules on property owners.

Senate Bill No. 181, most provisions of which are effective September 13, 2010, extends the Enterprise Zone tax abatement program an additional year to October 15, 2011.

See our August 2010 Renewable Energy Alert for a summary of the Department of Energy's federal loan guarantee program and related assistance for projects involving the manufacture of commercial technology renewal energy systems (such as energy storage systems) and components (such as wind turbine systems, blades and solar photovoltaic components).

Recent Decisions of Interest

A hearing by a board of elections on challenges to voter eligibility is a quasi-judicial hearing and therefore not subject to Ohio's Sunshine Law (R.C. Section 121.22). *State ex rel. Ross v. Crawford Cty. Bd. of Elections, 125 Ohio St. 3d 438*

A county sheriff may not move his office to a location outside the county seat of justice, and may not maintain his primary office in the county seat of justice and an operations center outside the county seat of justice. *2010 Op. Att'y General No. 2010-013*

A county employee's health insurance premium may be paid from special fund monies in the same proportion that the employee's salary is eligible to be paid from those special fund monies. Alternatively, a county employee's health insurance premium may be paid entirely from the county general fund. *2010 Op. Att'y General No. 2010-017*

A board of health of a general health district has authority to require that a household sewage disposal system be directly connected to a sanitary sewerage system whenever a sanitary sewerage system becomes accessible to a property; it may grant a variance from that requirement, on a case-by-case basis, under certain circumstances. *2010 Op. Att'y General No. 2010-019. NOTE: See also the summary of Amended Substitute Senate Bill No. 110 under Recent Legislation of Interest above.*

Bulletin 2010-003 issued by the State Auditor on July 16, 2010 deals with accounting issues related to Tax Increment Financing (TIF) and TIF Service Payments. The Bulletin describes how a typical TIF operates under Ohio law, funds that Ohio law may require to account for TIF Service Payments and TIF activity, and acceptable accounting and financial reporting for cash, budgetary and GAAP bases.
