



Ontario Implements Local Improvement Charges for Energy Retrofits to Private Homes

By David McRobert*

On October 25, 2012, Kathleen Wynne, current Ontario Premier and former Minister of Municipal Affairs and Housing (“MMAH”), filed an amendment¹ to the local improvement charges (“LICs”) regulation under the *Municipal Act, 2001*.² The amended regulation now permits municipalities to assist homeowner (and other building owners) in financing home improvements that will cut energy bills – such as upgrading insulation or replacing an old inefficient furnace – and then recover the amount later through municipal tax assessments. Such programs will help homeowners both save on energy bills and increase the value of their properties.

The use of LICs in this context is sometimes referred to as Property Assessed Payments for Energy Retrofits, or “PAPER”. Under such an arrangement, a property owner can hire, with the municipality’s approval, a licensed contractor to install energy efficiency improvements in their home or building. The municipality finances the improvement – through reserve funds, private sector loans or other financing options – and recovers the costs by billing the property owner on the property tax bill. The LIC payment schedule can be established so that the annual payment is less than the average savings achieved by the energy improvement, thereby providing a positive cash flow to the property owner.

The need for additional funding streams for residential energy investments is critical given the major gap in the current system of conservation program delivery: the Ontario government terminated its home retrofit program in March 2011 and the federal government followed suit in late January 2012, two months before its scheduled end date. Utility conservation programs remain but narrowly target either electricity or natural gas savings.

¹ O. Reg. 322/12.

² O. Reg. 586/06. Analogous amendments were made to O. Reg. 596/06 under the *City of Toronto Act, 2006* by O. Reg. 323/12.

2012 EBR Application

As described in an article in the May 2012 edition of this newsletter,³ a formal request to implement the regulatory changes to enable municipalities to establish PAPER programs was filed under the *Environmental Bill of Rights, 1993* (EBR) in 2012 by a number of applicants.⁴

The applicants made specific suggestions as to how the government should approach implementing a PAPER system.⁵ While they acknowledged that the list of local improvement “work” for which LICs can be charged under existing O. Reg. 586/06 and O. Reg. 596/06 might already allow municipalities to charge LICs for energy improvements on private properties, the applicants argued that “additional uses of LICs be specified,” pointing out that “the allocation of LIC costs and the method by which they are set up are too complex and time-consuming to enable LICs’ use for this purpose.”⁶

The applicants also requested changes to O. Reg. 73/94, the General Regulation made the EBR, to prescribe certain ministries and laws. The *Municipal Act, 2001*, the *City of Toronto Act, 2006*, the *Assessment Act*, and the regulations under these acts are not prescribed under the EBR for regular notices under Part II of the EBR (thus preventing public comment on environmentally significant changes to regulations made under those acts, consideration of Statements of Environmental Values related to regulatory decisions, applications for review, and other EBR processes). In order to allow requests for reviews of these acts and regulations made under them with respect to LICs, the applicants asked that MOE prescribe these acts under the EBR. Further, although MMAH administers the primary legislation, regulations, policies and instruments relevant to LICs, the applicants argued that the Ministry of Finance (MOF) should also be prescribed under the EBR since other related laws, regulations, policies and instruments administered by MOF may also need to be reviewed.

The EBR application was forwarded by the Environmental Commissioner of Ontario to MMAH as well as the Ministry of Energy, which oversees the *Green Energy Act, 2009*, and the MOE, which monitors and reports annually on greenhouses gas emissions and determines which ministries and laws are prescribed under O. Reg 73/94 under the EBR.

In January 2012, the Association of Municipalities of Ontario sent a letter to the then Minister of

³ Sonja Persram, “Request made under EBR to Implement a New Energy Retrofit Program Financed by Local Improvement Charges”, *EnviroNews*, vol. 21, no. 4 – May 2012; online: http://www.oba.org/en/pdf/sec_news_env_may12_ret_per.pdf.

⁴ The EBR applicants were advised on the application by David McRobert, former senior counsel at the Environmental Commissioner of Ontario and the author of this article and a co-author of the application. Stan Makuch, of the Ontario Bar, also provided advice to Sonja Persram on PAPER projects for a number of years.

⁵ To enable LICs to be used for energy retrofits, the applicants argued that amendments may be needed to the *Municipal Act, 2001* and several regulations: O. Reg. 586/06, O. Reg. 596/06 and O. Reg. 403/02 – Debt and Financial Obligation Limits. Furthermore, anticipating that buildings retrofitted to be more energy efficient will eventually be appraised at higher values – thereby imposing higher property taxes on property owners – the applicants suggested that the government amend aspects of Ontario’s *Assessment Act*. Specifically, the applicants proposed that the Minister of Finance, as authorized under subsection 3(1), paragraph 18.1 of the *Assessment Act*, prescribe regulations exempting from assessment and taxation any machinery and equipment used for the purposes of energy conservation or efficiency.

⁶ *Supra*, note 4.

Municipal Affairs and Housing, the Honourable Kathleen Wynne, expressing strong support for the application.

The applicants also posted the application on the internet and encouraged stakeholders and municipalities to endorse the EBR application. The David Suzuki Foundation had supported work on PAPER for several years. Municipalities that wrote letters of support in early 2012 included the City of Windsor, the City of Hamilton, the City of Toronto, Brant County and a host of other municipalities.⁷

MMAH rejected the EBR application and noted that the matter already was before the ministry, but posted a proposal for a regulation to empower municipalities to use LICs to finance energy improvement retrofits on private property as an information notice.

A number of stakeholders, including the Canadian Real Estate Association, the Toronto Real Estate Board, the Pembina Institute, Environmental Defence, the Association of Municipalities of Ontario, the Ontario Sustainable Energy Association, and the Canadian Environmental Law Association, expressed support for the regulation in response to that notice. Then-Minister Wynne's amendments to the *Municipal Act* and COTA to permit PAPER-like programs followed shortly after.

Obstacles to PAPER-like Programs

As noted above, developing PAPER-like programs requires municipalities, the provinces, financial institutions, environmental and energy groups and others to engage in a multi-stakeholder process to clarify roles and responsibilities.

Provinces will also need to assuage the concerns of mortgage lenders because banks and credit unions generally oppose the idea that liens (such as \$30,000 in municipal financing to retrofit your home) can be placed on property which will take priority over a mortgage in the event of default. (Such a concern raised by Fannie Mae and Freddie Mac⁸ in the U.S. has effectively brought all PAPER-like residential programs to a standstill until legal issues are resolved.) However, the entire lien amount of \$30,000 would not get priority over the mortgage; only any defaulted payments on that financed amount. Thus, once the property is sold, the new owner would take over the remainder of the retrofit financing.

Local Improvement Charge Regulation Amendment

Under the October 2012 amendments to the LIC regulation:

- Energy efficiency and renewable energy projects are listed as eligible under the definition of LIC “work.”
- If a municipality undertakes a work as a local improvement, a special charge imposed with respect to the work has priority lien status.

⁷ For a list of the municipal and association supporters and more background on PAPER, see http://www.sustainable-alternatives.ca/PAPER_collaboration.htm.

⁸ Wikipedia, Freddie Mac. Online: http://en.wikipedia.org/wiki/Freddie_Mac.

- A municipality may raise the cost of undertaking works as local improvements on private property by imposing special charges on the lots of the consenting property owners.

Implications for Municipalities

Since municipalities can obtain lower interest financing through the issuing of bonds than would be available to homeowners, they will be empowered to take more aggressive action to fight climate change. By selectively funding cost-effective energy retrofits the municipality will have greater indirect control over program impacts and can theoretically tailor programs to local economic development and employment training opportunities working with partners such as local chambers of commerce, colleges, and apprenticeship programs funded by senior levels of government.

Projects can be authorized by a municipality through a by-law for a specific work or a by-law to authorize a municipal program for a series of works after public notice is provided.

Table 1 - The Key Benefits of PAPER-like programs

Municipalities	<ul style="list-style-type: none"> • Improved building stock • Reduced need for infrastructure (i.e. In downtown Toronto, if demand is lowered and distributed generation increases then a new transformer and transmission line is unnecessary) • Potential for small profit from lending • Reduced GHG
Property owners	<ul style="list-style-type: none"> • Reduced risk: the cost is amortized and shared with the property's future owners • Improved living environment (improved insulation, lighting, air quality, etc.) • Reduced energy bills • Immediate income from renewable energy generation • Increased value of property
Business, industry and multi-unit dwellings	<ul style="list-style-type: none"> • Reduced risk: the cost of energy efficiency upgrades, conversion to combined heat and power and renewable energy is amortized and shared with the property's future owners • Improved living and working environment (improved insulation, lighting, air quality, etc.) • Reduced energy bills • Income from renewable energy generation • Increased value of property
Contractors	<ul style="list-style-type: none"> • Influx of new renovation and renewable energy contracts

Realtors	<ul style="list-style-type: none"> • Increased property value due to improved building stock
Utilities	<ul style="list-style-type: none"> • Reduced need for infrastructure • Reduced demand for natural gas, electricity and other fuels
Labour	<ul style="list-style-type: none"> • New local jobs are created for retrofitting buildings and installing technology

Source: Ontario Sustainable Energy Association, “Municipalities get real power to create good jobs, resilient communities and healthy environments”, Media Release, Oct. 25, 2012, Online: <http://ontario-sea.org/Page.asp?PageID=122&ContentID=4132>.

City of Toronto Consultations, 2012-2013

In 2012, the City of Toronto began exploring ways to take advantage of the amendments and help property owners reduce energy use. In July 2012, City Council adopted a motion to prepare a proposal for a pilot energy (and potentially water efficiency) program for residential property owners.⁹ The Environment and Energy Office is leading the development of this proposal and consultation with various stakeholders such as the utility companies, energy advisors, ENGOs, various associations and the finance community.

In March 2013, the city began consulting on a proposed three-year pilot program that would include two streams: 1,000 single family homes and 10 privately owned multi-residential rental buildings (representing approximately 1,000 housing units).

The consultations will help inform program design elements going forward, including eligibility requirements, conducting energy assessments, financing terms and conditions, the qualification of contractors and energy advisors, and the determination of which cost-effective energy efficiency technologies, equipment and measures will be supported through this program.

Key features of Toronto’s Program Design:

Under Toronto’s proposed program, the city will coordinate the work of energy advisors and qualified contractors from beginning to end. In addition, the City will partner with the utility companies to bundle all available rebates, incentives and special offers to ensure the property owner gets the best deal possible.

Community associations, ratepayer groups, apartment industry associations and residents have been encouraged to attend meetings and provide input on the proposed pilot program. The input will help inform a staff report for consideration by City Council in the spring of 2013. A central component of the proposed pilot program will be to assess the extent to which the availability of this LIC financing option increases the uptake of energy retrofits.

⁹ Toronto City Council, decision on motion to prepare a proposal for a pilot energy (and potentially water efficiency) program for residential property owners, July 2012. Online (City Council decision): <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.ED15.8>.

Conclusion

Energy retrofit programs that help owners undertake retrofits are long overdue in Canada. These programs can significantly reduce energy use and advance municipal and Canada-wide achievement of our conservation and GHG reduction goals. Municipalities cannot offer this kind of financing unless provinces enact enabling legislation. Thus far, two provinces in Canada, Ontario and Nova Scotia, have done so.

It should also be noted that O. Reg. 397/11 (Energy Conservation and Demand Management Plans) made under the Ontario *Green Energy Act, 2009* requires municipalities to establish energy consumption reports and conservation plans in response to targets set by the Ontario government. If such targets are set, removing barriers to using LICs for energy efficiency improvements will facilitate achieving them.

The EBR applicants believe that their work on the EBR review application and assembling support letters from municipalities and AMO helped to spur action by MMAH. The applicants are gratified that many energy and environmental organizations such as Ontario Sustainable Energy Association (OSEA), although initially reluctant to support the EBR application, expressed enthusiastic support for the LIC regulations once promulgated.¹⁰

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¹⁰ Ontario Sustainable Energy Association, Municipalities get real power to create good jobs, resilient communities and healthy environments, Media Release, Oct. 25, 2012, Online: <http://ontario-sea.org/Page.asp?PageID=122&ContentID=4132>