



CLIENT ALERT
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State Budget Exempts Renewable and Energy Efficiency Projects from New Prevailing Wage Requirements and Protects Tax Incentives for Brownfield Cleanup Projects

The current health crisis did not stop Governor Cuomo from achieving ambitious policy initiatives in the State's 2020-2021 budget. These policy initiatives include the controversial extension of prevailing wage requirements to certain private construction projects that receive public funds. However, there are important exclusions to the prevailing wage requirements involving Brownfield Cleanup Program projects and certain energy efficiency and renewable energy projects, including those that may be financed under the Property Assessed Clean Energy (PACE) program. These exclusions recognize the importance of such projects to meet economic revitalization, greenhouse gas reduction and clean energy goals.

After previous failed attempts, this year's State budget includes new provisions to the Labor Law that take effect January 1, 2022 and require union wages to be paid to construction workers on "covered projects" that cost over \$5 million where at least 30 percent of the total construction costs are "paid in whole or in part from public funds." Significantly, "covered projects" do not include construction work and engineering and consulting services performed in connection with the installation of a renewable energy system, renewable heating and cooling system, or energy storage system, with a capacity equal to or under 5 megawatts alternating current. This express exclusion is consistent with New York State's objective to achieve state-wide energy efficiency and renewable energy goals.

The definition of "paid in whole or in part from public funds" includes, among other things, savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions, tax increment financing and payments in lieu of taxes. However, tax benefits related to Brownfield Cleanup Program remediation and redevelopment are clearly excluded from the definition of "paid in whole or in part from



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public funds.” Accordingly, when the new law takes effect, developers of construction projects that avail themselves of New York State’s Brownfield Cleanup Program and the associated tax credits will not have to take into account brownfield remediation or redevelopment tax credits in assessing whether such projects are subject to the new prevailing wage requirements.

In addition, Property Assessed Clean Energy (PACE) financing authorized under Municipal Law Article 5-L is also not implicated by the new prevailing wage requirements. Article 5-L, which was adopted in 2015, authorizes municipalities to offer financing for property owners to pay for certain energy efficiency and renewable energy projects that meet New York State Energy Research and Development Authority (NYSERDA) eligibility requirements. PACE financing allows approved energy efficiency and renewable energy systems, technologies and improvements to be paid over time, without requiring the property owner to make a large upfront investment. Instead, property owners enter into a voluntary agreement with the applicable municipality to pay an annual special assessment on their property. Because PACE does not reduce the amount of taxes due to the municipalities, and offers competitive market rates for loans secured by the special assessment, PACE financing does not appear to fall within the definition of “paid for in whole or in part with public funds.”

Several municipalities in New York, including New York City, Yonkers and New Rochelle, have recently passed local laws to enable PACE financing. In addition to the energy and cost savings that make renewable energy and energy efficiency projects appealing, the availability of PACE financing and the favorable treatment of such projects under the new prevailing wage requirements may make them more attractive from an affordability perspective.

During these uncertain and unprecedented times, Mintzer Mauch PLLC continues to track developments in areas of interest to our clients, including brownfields and renewable energy.