SENATE, No. 329

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS

Establishes "Solar Roof Installation Warranty Program" in EDA and transfers $2 million from societal benefits charge to initially fund program.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT establishing a "Solar Roof Installation Warranty Program" in the New Jersey Economic Development Authority, and amending and supplementing P.L.1974, c.80.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 5 of P.L.1974, c.80 (C.34:1B-5) is amended to read as follows:

5. The authority shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at pleasure;

c. To sue and be sued;

d. To acquire in the name of the authority by purchase or otherwise, on such terms and conditions and such manner as it may deem proper, or by the exercise of the power of eminent domain in the manner provided by the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.), any lands or interests therein or other property which it may determine is reasonably necessary for any project; provided, however, that the authority in connection with any project shall not take by exercise of the power of eminent domain any real property except upon consent thereto given by resolution of the governing body of the municipality in which such real property is located; and provided further that the authority shall be limited in its exercise of the power of eminent domain in connection with any project in qualifying municipalities as defined under the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.), or to municipalities which had a population, according to the latest federal decennial census, in excess of 10,000;

e. To enter into contracts with a person upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of the project and to pay or compromise any claims arising therefrom;

f. To establish and maintain reserve and insurance funds with respect to the financing of the project or the school facilities project and any project financed pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.);

g. To sell, convey or lease to any person all or any portion of a project for such consideration and upon such terms as the authority may determine to be reasonable;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.

h. To mortgage, pledge or assign or otherwise encumber all or any portion of a project, or revenues, whenever it shall find such action to be in furtherance of the purposes of this act, P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

i. To grant options to purchase or renew a lease for any of its projects on such terms as the authority may determine to be reasonable;

j. To contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from the State or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), with the terms and conditions thereof;

k. In connection with any action undertaken by the authority in the performance of its duties and any application for assistance or commitments therefo and modifications thereof, to require and collect such fees and charges as the authority shall determine to be reasonable, including but not limited to fees and charges for the authority's administrative, organizational, insurance, operating, legal, and other expenses;

l. To adopt, amend and repeal regulations to carry out the provisions of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.);

m. To acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein, take assignments of rentals and leases and make and enter into all contracts, leases, agreements and arrangements necessary or incidental to the performance of its duties;

n. To purchase, acquire and take assignments of notes, mortgages and other forms of security and evidences of indebtedness;

o. To purchase, acquire, attach, seize, accept or take title to any project or school facilities project by conveyance or by foreclosure, and sell, lease, manage or operate any project or school facilities project for a use specified in this act, P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery

Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

p. To borrow money and to issue bonds of the authority and to provide for the rights of the holders thereof, as provided in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

q. To extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project or school facilities project, which credits or loans may be secured by loan and security agreements, mortgages, leases and any other instruments, upon such terms and conditions as the authority shall deem reasonable, including provision for the establishment and maintenance of reserve and insurance funds, and to require the inclusion in any mortgage, lease, contract, loan and security agreement or other instrument, of such provisions for the construction, use, operation and maintenance and financing of a project or school facilities project as the authority may deem necessary or desirable;

r. To guarantee up to 90% of the amount of a loan to a person, if the proceeds of the loan are to be applied to the purchase and installation, in a building devoted to industrial or commercial purposes, or in an office building, of an energy improvement system;

s. To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the redevelopment utility to carry out the purposes of P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.), and to fix and pay their compensation from funds available to the redevelopment utility therefor, all without regard to the provisions of Title 11A of the New Jersey Statutes;

t. To do and perform any acts and things authorized by P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.), under, through or by means of its own officers, agents and employees, or by contract with any person;

u. To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable;

v. To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in P.L.1974, c.80 (C.34:1B-1 et seq.), section 6 of P.L.2001, c.401 (C.34:1B-4.1), P.L.2000, c.72 (C.18A:7G-1 et al.), the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

w. To construct, reconstruct, rehabilitate, improve, alter, equip, maintain or repair or provide for the construction, reconstruction, improvement, alteration, equipping or maintenance or repair of any development property and lot, award and enter into construction contracts, purchase orders and other contracts with respect thereto, upon such terms and conditions as the authority shall determine to be reasonable, including, but not limited to, reimbursement for the planning, designing, financing, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance of any such development property and the settlement of any claims arising therefrom and the establishment and maintenance of reserve funds with respect to the financing of such development property;

x. When authorized by the governing body of a municipality exercising jurisdiction over an urban growth zone, to construct, cause to be constructed or to provide financial assistance to projects in an urban growth zone which shall be exempt from the terms and requirements of the land use ordinances and regulations, including, but not limited to, the master plan and zoning ordinances, of such municipality;

y. To enter into business employment incentive agreements as provided in the "Business Employment Incentive Program Act," P.L.1996, c.26 (C.34:1B-124 et al.);

z. To enter into agreements or contracts, execute instruments, and do and perform all acts or things necessary, convenient or desirable for the purposes of the redevelopment utility to carry out any power expressly provided pursuant to P.L.1974, c.80 (C.34:1B-1 et seq.), P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.), including, but not limited to, entering into contracts with the State Treasurer, the Commissioner of Education, districts, the New Jersey Schools Development Authority, and any other entity which may be required in order to carry out the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), P.L.2007, c.137 (C.52:18A-235 et al.), and sections 3 through 18 of P.L.2009, c.90 (C.52:27D-489c et al.);

aa. (Deleted by amendment, P.L.2007, c.137);

bb. To make and contract to make loans to local units to finance the cost of school facilities projects and to acquire and contract to

acquire bonds, notes or other obligations issued or to be issued by local units to evidence the loans, all in accordance with the provisions of P.L.2000, c.72 (C.18A:7G-1 et al.), and P.L.2007, c.137 (C.52:18A-235 et al.);

cc. Subject to any agreement with holders of its bonds issued to finance a project or school facilities project, obtain as security or to provide liquidity for payment of all or any part of the principal of and interest and premium on the bonds of the authority or for the purchase upon tender or otherwise of the bonds, lines of credit, letters of credit, reimbursement agreements, interest rate exchange agreements, currency exchange agreements, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread or similar exposure or similar agreements, float agreements, forward agreements, insurance contract, surety bond, commitment to purchase or sell bonds, purchase or sale agreement, or commitments or other contracts or agreements, and other security agreements or instruments in any amounts and upon any terms as the authority may determine and pay any fees and expenses required in connection therewith;

dd. To charge to and collect from local units, the State and any other person, any fees and charges in connection with the authority's actions undertaken with respect to school facilities projects, including, but not limited to, fees and charges for the authority's administrative, organization, insurance, operating and other expenses incident to the financing of school facilities projects;

ee. To make loans to refinance solid waste facility bonds through the issuance of bonds or other obligations and the execution of any agreements with counties or public authorities to effect the refunding or rescheduling of solid waste facility bonds, or otherwise provide for the payment of all or a portion of any series of solid waste facility bonds. Any county or public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of not less than fifty percent of the aggregate debt service for the refunded or rescheduled debt of the particular county or public authority for the duration of the loan; except that, whenever the solid waste facility bonds to be refinanced were issued by a public authority and the county solid waste facility was utilized as a regional county solid waste facility, as designated in the respective adopted district solid waste management plans of the participating counties as approved by the department prior to November 10, 1997, and the utilization of the facility was established pursuant to tonnage obligations set forth in their respective interdistrict agreements, the public authority refunding or rescheduling its solid waste facility bonds pursuant to this subsection shall provide for the payment of a percentage of the aggregate debt service for the refunded or rescheduled debt of the public authority not to exceed the

percentage of the specified tonnage obligation of the host county for the duration of the loan. Whenever the solid waste facility bonds are the obligation of a public authority, the relevant county shall execute a deficiency agreement with the authority, which shall provide that the county pledges to cover any shortfall and to pay deficiencies in scheduled repayment obligations of the public authority. All costs associated with the issuance of bonds pursuant to this subsection may be paid by the authority from the proceeds of these bonds. Any county or public authority is hereby authorized to enter into any agreement with the authority necessary, desirable or convenient to effectuate the provisions of this subsection.

The authority shall not issue bonds or other obligations to effect the refunding or rescheduling of solid waste facility bonds after December 31, 2002. The authority may refund its own bonds issued for the purposes herein at any time;

ff. To pool loans for any local government units that are refunding bonds and do and perform any and all acts or things necessary, convenient or desirable for the purpose of the authority to achieve more favorable interest rates and terms for those local governmental units;

gg. To finance projects approved by the board, provide staff support to the board, oversee and monitor progress on the part of the board in carrying out the revitalization, economic development and restoration projects authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et al.) and otherwise fulfilling its responsibilities pursuant thereto;

hh. To offer financial assistance to qualified film production companies as provided in the "New Jersey Film Production Assistance Act," P.L.2003, c.182 (C.34:1B-178 et al.); **[**and**]**

ii. To finance or develop private or public parking facilities or structures, which may include the use of solar photovoltaic equipment, in municipalities qualified to receive State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and municipalities that contain areas designated pursuant to P.L.1985, c.398 (C.52:18A-196 et al.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town center, and to provide appropriate assistance, including but not limited to, extensions of credit, loans, and guarantees, to municipalities qualified to receive State aid pursuant to the provisions of P.L.1978, c.14 (C.52:27D-178 et seq.) and municipalities that contain areas designated pursuant to P.L.1985, c.398 (C.52:18A-196 et seq.) as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a town center, and their agencies and instrumentalities or to private entities whose projects are located in those municipalities, in order to facilitate the financing and development of parking facilities or structures in such municipalities. The authority may serve as the

issuing agent of bonds to finance the undertaking of a project for the purposes of this subsection ; and

jj. To establish and maintain a "Solar Roof Installation Warranty Program" and a "Solar Roof Installation Warranty Fund" pursuant to sections 3 and 4 of P.L. , c. (C.) (pending before the Legislature as this bill) for the purposes set forth therein.

(cf: P.L.2010, c.28, s.3)

2. (New section) Notwithstanding the provisions of section 12 of P.L.1999, c.23 (C.48:3-60) to the contrary, or any rule, regulation, or order adopted pursuant thereto, in the fiscal year commencing July 1 next following the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill), the Board of Public Utilities shall, from available balances accumulated in accounts of the board from funds collected through the societal benefits charge imposed pursuant to that section, transfer $2,000,000 into the “Solar Roof Installation Warranty Fund,” established pursuant to section 4 of P.L. , c. (C.) (pending before the Legislature as this bill), and shall make an additional transfer of $500,000 each fiscal year thereafter until the fund has been credited with a cumulative total of $5,000,000. If in any fiscal year after being credited with a cumulative total of $5,000,000 the balance in the fund declines to less than $2,000,000, the board shall, one time only, transfer a supplementary $3,000,000 into the fund.

3. (New section) There is hereby established a "Solar Roof Installation Warranty Program" within the authority, which shall be administered pursuant to the provisions of section 4 of P.L. , c. (C.) (pending before the Legislature as this bill). The purpose of the program is to provide a source of indemnification to owners of commercial, industrial, and institutional buildings located in the State damaged as a result of the installation of solar photovoltaic equipment on their building roofs.

4. (New section) a. To implement the program, the authority shall establish, administer, and maintain a "Solar Roof Installation Warranty Fund" in a trust account, separate and apart from other funds. The authority shall consult with the Department of Banking and Insurance and the Board of Public Utilities prior to establishing the fund. The fund shall be credited with the amount required to be transferred thereto pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill). The purpose of the fund is: (1) to provide moneys sufficient to pay claims by commercial, industrial, and institutional building owners participating in the fund for damages to building roofs due to the installation or design of solar photovoltaic equipment on building

roofs that are not covered by any other roof warranty or insurance; and (2) to pay the costs of administering the solar roof installation warranty program established in the authority pursuant to section 3 of P.L. , c. (C.) (pending before the Legislature as this bill), including the costs of obtaining sufficient reinsurance to prudently protect the fund against unanticipated risks and costs incurred by the authority in the discharge of its duties.

b. Applications for participation in the warranty program shall be submitted by commercial, industrial, and institutional building owners at the time of installation of such solar photovoltaic equipment on the roof of a building located in the State in a form and manner determined by the authority. The applicant shall demonstrate to the authority that the solar photovoltaic equipment installer does not offer a comprehensive warranty of at least 20 years duration on the roofs upon which the equipment is installed and that the installation of such equipment is not covered by any other insurance policy. The application shall include a payment of an application fee of $1,000. The amounts paid to participating building owners shall be established by the authority and may be changed from time to time and shall be calculated to assure that the fund balance is sufficient to cover anticipated claims, to provide a reasonable reserve, and to cover the costs of administering the fund, provided however, that the maximum amount to be paid from the fund for a loss to a participant for any one building shall be $50,000. The application fee paid by commercial, industrial, and institutional building owners shall be forwarded to the authority and shall be accounted for and credited to the fund.

c. The authority shall hold, manage, and through the Division of Investment in the Department of the Treasury, invest and reinvest moneys in the fund and credit all income earned thereon to the fund in the same manner as provided by law for the investment of pension and retirement funds administered by the State. The authority shall keep the State Treasurer advised of anticipated cash demands for payment of claims against the fund. No funds shall be spent, appropriated, or transferred from the fund other than for the express purposes of paying claims or costs related to administering the fund as specified in subsections a. and b. of this section. The Joint Budget Oversight Committee, or its successor, shall have the authority to investigate complaints of violative fund transfers under this section, and shall order the authority to suspend paying claims if it determines that the provisions of this subsection have been violated.

d. Prior to making a claim against the fund for damages covered by the warranty, a building owner shall notify the installer of such defects and allow a reasonable time period for repair. If the repairs are not made within a reasonable time or are not satisfactory to the building owner, the building owner may file a claim against

the fund in the form and manner prescribed by the authority. The authority shall investigate each claim to determine the validity thereof, and upon a finding that the building owner is without fault with respect to the damage for which the claim is made, the authority shall determine the amount of the award that shall be made thereon. If a claim is denied or the amount of the award is contested, the authority shall hold a hearing if requested by the building owner, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), applicable to contested cases. Provided there are sufficient moneys in the fund to cover anticipated claims, the amount of the award shall cover the reasonable costs necessary to indemnify the building owner for the cost of repairing any damages to the roof that are covered under the warranty program, but the total amount of an award from the fund shall not exceed the maximum award established in subsection b. of this section or the cost of those repairs, whichever is less. Upon certification from the authority of the amount of an award, the authority shall make payment to the building owner from the fund.

e. If the authority determines that fund reserves and reinsurance may be insufficient to cover anticipated claims, the authority shall restore fund resources to sufficiency by means that may include, in addition to any supplementary transfer made pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), increases in fees, expanded reinsurance, and changes in standards and claims adjudication procedures.

f. The authority may provide for surcharges against those building owners who are responsible for a significant number of awards against the fund and may discontinue the participation in the fund of any building owner who is responsible for an excessive number of awards against the fund after a hearing in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), applicable to contested cases. At no time shall the State be required to contribute any moneys to the fund, nor shall the State or the authority have any liability to any person having any right to or claim against the fund over and above the amount therein except in those instances where it is determined by the Joint Budget Oversight Committee that the provisions of subsection c. of this section have been violated concerning amounts spent, appropriated or transferred from the fund.

5. This act shall take effect on the 60th day after the date of enactment, but the New Jersey Economic Development Authority may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill establishes a "Solar Roof Installation Warranty Program" (program) within the New Jersey Economic Development Authority (EDA). The purpose of the program is to provide a source of indemnification to commercial, industrial, and institutional building owners who install solar photovoltaic equipment on their building roofs, but are unable to obtain sufficient warranty coverage against damage to those roofs resulting from the installations.

To implement the program, the bill requires the EDA to establish a "Solar Roof Installation Warranty Fund" (warranty fund) in a trust account in consultation with the Department of Banking and Insurance and the Board of Public Utilities (BPU). The purpose of the warranty fund is to: 1) provide sufficient money to pay claims by commercial, industrial, and institutional building owners, who are participating in the warranty fund, for damages to building roofs due to the installation or design of solar photovoltaic equipment that are not covered by a warranty or insurance policy; and 2) pay the costs of administering the solar roof installation warranty program, including the costs of obtaining sufficient reinsurance to prudently protect the warranty fund against unanticipated risks and costs incurred by the EDA in the discharge of its duties.

The bill requires applications for participation in the program to be submitted by building owners at the time of installation of solar photovoltaic equipment on the roof of a building located in the State, in a form and manner determined by the EDA. The applicant must demonstrate that the solar photovoltaic equipment installer does not offer a comprehensive 20-year warranty on the roofs upon which the equipment is installed and that the installation of the equipment is not covered by any other warranty or insurance policy. The application fee is to be $1,000. The maximum amount to be paid from the warranty fund for a loss to a participant for any one building is to be $50,000. The application fee paid by building owners is to be forwarded to the EDA to be accounted for and credited to the warranty fund.

The bill provides that, prior to making a claim against the warranty fund for damages covered by the warranty, a building owner must notify the installer of the damage and allow a reasonable time period for repair. If repairs are not made within a reasonable time or are not satisfactory to the building owner, the building owner may file a claim against the warranty fund in the form and manner prescribed by the EDA. The bill requires the EDA to investigate each claim to determine its validity, and upon a finding that the building owner is without fault with respect to the damage for which the claim is made, determine the amount of the award. If a claim is denied or the amount of the award is contested, the building owner may request a hearing. If an award is made

from the warranty fund, the total amount of an award is not to exceed the maximum amount authorized in the bill or the cost of repairs, whichever is less. The EDA may provide for surcharges against building owners who are responsible for a significant number of awards against the warranty fund and may discontinue the participation in the warranty fund of any building owner who is responsible for an excessive number of awards against the warranty fund, after a hearing.

The bill directs the BPU to transfer, in the fiscal year commencing July 1 next following the date of enactment, $2,000,000 from available balances accumulated in accounts of the BPU from funds collected through the societal benefits charge, for deposit into the warranty fund. The bill requires the BPU to make additional deposits of $500,000 each fiscal year thereafter until the warranty fund has been credited with a cumulative total of $5,000,000. The bill provides that, if in any fiscal year thereafter the balance in the warranty fund falls below $2,000,000, the BPU is to make a one-time deposit of $3,000,000 into the warranty fund.