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BILL ANALYSIS



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House Bill 5640 (Substitute H-3 as passed by the House)
Sponsor: Representative Rebekah Warren
House Committee: Great Lakes and Environment
Senate Committee: Local, Urban and State Affairs

Date Completed: 9-20-10

CONTENT

The bill would create the "Property Assessed Clean Energy Act" to allow a local unit of government to establish a property assessed clean energy program, under which the local unit could enter into a contract with a property owner to finance energy efficiency improvements or renewable energy systems. Specifically, the bill would do the following:

- **Authorize the local unit to create districts under the program.**
- **Provide for the repayment of the improvements' or systems' costs through assessments upon benefited property.**
- **Provide that an assessment imposed under a property assessed clean energy program would constitute a lien against the property.**
- **Allow a local unit to issue bonds or notes to finance activities under its program.**

Program Establishment

The bill would allow a county, township, city, or village to establish a property assessed clean energy program and, from time to time, create a district or districts under the program within the local unit's jurisdictional boundaries. Districts could be separate, overlapping, or coterminous.

To establish the program, the governing body of the local unit would have to take certain actions in the order prescribed in the bill. First, the governing body would have to adopt a resolution of intent that included all of the following:

- A finding that the financing of renewable energy systems and energy efficiency improvements is a valid public purpose.
- A statement of intent to provide funds for energy efficiency improvements and renewable energy systems to be repaid by assessments on the property benefited, with the agreement of the record owners.
- A description of the proposed arrangements for financing the program.
- The types of energy efficiency improvements and renewable energy systems that could be financed.
- Reference to a report (described below) on the proposed program and a location where the report was available.
- The time and place for a public hearing on the proposed program.

After adopting the resolution, the governing body would have to hold a public hearing at which the public could comment on the proposed program, including the required report. Then, the local unit would have to adopt a resolution establishing the program and setting forth its terms and conditions, including a description of which aspects of the program could be amended without a new public hearing and which aspects could be amended only after a new hearing was held.

A local unit could join with any number or combination of other local units or people by contract or as otherwise permitted by law for the implementation of a property assessed clean energy program, in whole or in part. If two or more local units implemented a joint program, a single public hearing held jointly by those local units would be sufficient to satisfy the bill's public hearing requirements.

Report

The report on the proposed program would have to include all of the following:

- A form of contract between the local unit and record owner governing the terms and conditions of financing and assessment under the program.
- Identification of an official authorized to enter into a program contract on behalf of the local unit.
- A maximum aggregate annual dollar amount for all financing to be provided by the local unit under the program.
- An application process and eligibility requirements for financing energy efficiency improvements or renewable energy systems under the program.
- A method for determining interest rates on assessment installments, repayment periods, and the maximum amount of an assessment.
- An explanation of how assessments would be made and collected consistent with the bill's requirements.
- A plan for raising capital to finance improvements under the program.

The plan for raising capital could include the sale of bonds or notes, subject to the Revised Municipal Finance Act, and amounts to be advanced by the local unit through funds available to it from other sources.

In addition, the report would have to include information regarding the following, to the extent known, or procedures to determine the following in the future:

- Any reserve funds or funds to be used as security for the bonds or notes.
- Any application, administration, or other program fees to be charged to participating property owners that would be used to finance costs incurred by the local unit as a result of the program.

The local unit would have to make the report available for review on its website or at the office of the clerk or the official authorized to enter contracts under the program.

Assessment

A local unit could enter into a contract with the record owner of property within a district to finance or refinance energy efficiency improvements or the acquisition, installation, or improvement of one or more renewable energy systems on the property. The contract would have to provide for the repayment of the cost of the improvements or systems through assessments upon the property benefited. The financing or refinancing could include the cost of materials and labor necessary for installation, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that the property owner could incur pursuant to the installation on a specific or pro rata basis, as determined by the local unit.

Before entering into a contract with a property owner, the local unit would have to verify all of the following:

- That there were no delinquent taxes, special assessments, or water or sewer charges on the property.
- That there were no delinquent assessments on the property under a property assessed clean energy program.

An assessment imposed under a property assessed clean energy program, including any interest on the assessment and any penalty, would constitute a lien against the property until the assessment, including any interest or penalty, was paid in full. The lien would run with the property, and would have the same priority and status as other property tax and assessment liens. If the payment of an assessment were delinquent, the local unit would have all rights, as it does with respect to delinquent property taxes. When the assessment, including any interest and penalty, was paid, the lien would be removed from the property.

Installments of assessments due under a program would have to be included in each summer and winter tax bill, and collected at the same time and in the same manner as property taxes. Alternatively, installments could be billed and collected as provided in a special assessment ordinance of general applicability as adopted by the local unit.

Bonds & Notes

A local unit could issue bonds or notes to finance energy efficiency improvements and renewable energy systems under its program. Bonds or notes would not be general obligations of the local unit, but would have to be secured by one or more of the following as provided by the governing body in the resolution or ordinance approving them:

- Payments of assessments on benefited property within the district or districts specified.
- Reserves established by the local unit from grants, bond or note proceeds, or other lawfully available funds.
- Municipal bond insurance, lines or letters of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, and any other available means of providing credit support or liquidity, including arrangements described in the Revised Municipal Finance Act.
- Tax increment revenue that was lawfully available for such purposes.
- Any other amounts lawfully available for such purposes.

A local unit of government could issue its general obligation bonds or notes under the bill for the purposes of establishing a reserve fund to secure bonds or notes, and paying the costs associated with creating a property assessed clean energy program.

Bonds or notes issued under the bill would be subject to the Revised Municipal Finance Act. The bonds or notes, and interest payable on them, would be exempt from all taxation by the State and its political subdivisions.

Definitions

"Energy efficiency improvement" would mean the installation or modification of equipment, devices, or materials intended to decrease energy consumption, including all of the following:

- Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.
- Automated energy control systems.
- Heating, ventilating, or air-conditioning and distribution system modifications or replacements.

- Caulking, weather-stripping, and air sealing.
- Replacement or modification of lighting fixtures to reduce the energy use of the lighting system.
- Energy recovery systems.
- Day lighting systems.
- Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.
- Any other installation or modification of equipment, devices, or materials approved as a utility cost-saving measure by the governing body of the local unit.

These improvements also would include storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

"Renewable energy system" would mean a fixture, product, device, or interacting group of such items installed on the customer's side of the meter that uses one or more renewable energy resources to generate electricity. The term would include a biomass stove but not an incinerator or digester.

"Renewable energy resource" would mean a resource that naturally replenishes over a human, not a geological, time frame and that ultimately is derived from solar power, water power, or wind power. The term would not include petroleum, nuclear, natural gas, or coal. The bill specifies that a renewable energy resource would come from the sun or from thermal inertia of the earth and minimize the output of toxic material in the conversion of the energy. The term would include biomass, solar and solar thermal energy, wind energy, geothermal energy, and methane gas captured from a landfill.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would increase both revenue and expense for local units by an unknown amount depending on the number of local units adopting programs, the number of taxpayers entering into agreements under the bill, and value of any improvements that occurred. The bill would potentially increase revenue to the State School Aid Fund, and result in a net increase in local revenue, if the improvements resulted in higher taxable values.

Twenty-two states have enacted similar legislation. The largest such district is in Sonoma County, California, where approximately \$30.0 million has been disbursed for approved improvements to 1,010 homes and 22 commercial properties.

If the bill were enacted, it is unclear when any fiscal impacts would occur. In addition to the uncertainties already identified, the Federal Housing Finance Agency (FHFA) has urged local units to place a moratorium on programs. Primarily due to concerns about the priority of any program-related liens, the FHFA also has instructed Fannie Mae, Freddie Mac, and Federal Home Loan Banks to take certain actions that have apparently pre-empted the implementation of a similar Federal pilot program that was to run for 24 months in 12 states.

Fiscal Analyst: David Zin