

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5640**

(As amended November 30, 2010)

[A bill to authorize local units of government to adopt property assessed clean energy programs and to create districts to promote the use of renewable energy systems and energy efficiency improvements by owners of certain real property; to provide for the financing of such programs through voluntary property assessments, commercial lending, and other means; to authorize a local unit of government to issue bonds, notes, and other evidences of indebtedness and to pay the cost of renewable energy systems and energy efficiency improvements from the proceeds thereof; to provide for the repayment of bonds, notes, and other evidences of indebtedness; to authorize certain fees; to prescribe the powers and duties of certain governmental officers and entities; and to provide for remedies.]

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "property assessed clean energy act".

3           Sec. 3. As used in this act:

4           (a) "District" means a district created under a property  
5 assessed clean energy program by a local unit of government that  
6 lies within the local unit of government's jurisdictional  
7 boundaries. A local unit of government may create more than 1  
8 district under the program, and districts may be separate,  
9 overlapping, or coterminous.

10           (b) "Energy efficiency improvement" means equipment, devices,  
11 or materials intended to decrease energy consumption, including,  
12 but not limited to, all of the following:

13           (i) Insulation in walls, roofs, floors, foundations, or heating  
14 and cooling distribution systems.

15           (ii) Storm windows and doors; multi-glazed windows and doors;  
16 heat-absorbing or heat-reflective glazed and coated window and door  
17 systems; and additional glazing, reductions in glass area, and  
18 other window and door system modifications that reduce energy  
19 consumption.

20           (iii) Automated energy control systems.

21           (iv) Heating, ventilating, or air-conditioning and distribution  
22 system modifications or replacements.

23           (v) Caulking, weather-stripping, and air sealing.

24           (vi) Replacement or modification of lighting fixtures to reduce  
25 the energy use of the lighting system.

26           (vii) Energy recovery systems.

27           (viii) Day lighting systems.

1           (ix) Installation or upgrade of electrical wiring or outlets to  
2 charge a motor vehicle that is fully or partially powered by  
3 electricity.

4           (x) Measures to reduce the usage of water or increases the  
5 efficiency of water usage.

6           (xi) Any other installation or modification of equipment,  
7 devices, or materials approved as a utility cost-savings measure by  
8 the governing body.

9           (c) "Energy project" means the installation or modification of  
10 an energy efficiency improvement or the acquisition, installation,  
11 or improvement of a renewable energy system.

12           (d) "Governing body" means the county board of commissioners  
13 of a county, the township board of a township, or the council or  
14 other similar elected legislative body of a city or village.

15           (e) "Local unit of government" means a county, township, city,  
16 or village.

17           (f) "Person" means an individual, firm, partnership,  
18 association, corporation, unincorporated joint venture, or trust,  
19 organized, permitted, or existing under the laws of this state or  
20 any other state, including a federal corporation, or a combination  
21 thereof. However, person does not include a local unit of  
22 government.

23           (g) "Property" means privately owned commercial or industrial  
24 real property located within the local unit of government.

25           (h) "Property assessed clean energy program" or "program"  
26 means a program as described in section 5(2).

27           (i) "Record owner" means the person or persons possessed of

1 the most recent fee title or land contract vendee's interest in  
2 property as shown by the records of the county register of deeds.

3 (j) "Renewable energy resource" means a resource that  
4 naturally replenishes over a human, not a geological, time frame  
5 and that is ultimately derived from solar power, water power, or  
6 wind power. Renewable energy resource does not include petroleum,  
7 nuclear, natural gas, or coal. A renewable energy resource comes  
8 from the sun or from thermal inertia of the earth and minimizes the  
9 output of toxic material in the conversion of the energy and  
10 includes, but is not limited to, all of the following:

11 (i) Biomass.

12 (ii) Solar and solar thermal energy.

13 (iii) Wind energy.

14 (iv) Geothermal energy.

15 (v) Methane gas captured from a landfill.

16 (k) "Renewable energy system" means a fixture, product,  
17 device, or interacting group of fixtures, products, or devices on  
18 the customer's side of the meter that use 1 or more renewable  
19 energy resources to generate electricity. Renewable energy system  
20 includes a biomass stove but does not include an incinerator or  
21 digester.

22 Sec. 5. (1) Pursuant to the procedures provided in section 7,  
23 a local unit of government may establish a property assessed clean  
24 energy program and may, from time to time, create a district or  
25 districts under the program.

26 (2) Under a program, the local unit of government may enter  
27 into a contract with the record owner of property within a district

1 to finance or refinance 1 or more energy projects on the property.  
2 The contract may provide for the repayment of the cost of an energy  
3 project through assessments upon the property benefited. The  
4 financing or refinancing may include the cost of materials and  
5 labor necessary for installation, permit fees, inspection fees,  
6 application and administrative fees, bank fees, and all other fees  
7 that may be incurred by the record owner pursuant to the  
8 installation on a specific or pro rata basis, as determined by the  
9 local unit of government.

10 Sec. 7. (1) To establish a property assessed clean energy  
11 program, the governing body of a local unit of government shall  
12 take the following actions in the following order:

13 (a) Adopt a resolution of intent that includes all of the  
14 following:

15 (i) A finding that the financing of energy projects is a valid  
16 public purpose.

17 (ii) A statement of intent to provide funds for energy  
18 projects, which may be repaid by assessments on the property  
19 benefited, with the agreement of the record owners.

20 (iii) A description of the proposed arrangements for financing  
21 the program.

22 (iv) The types of energy projects that may be financed.

23 (v) Reference to a report on the proposed program as described  
24 in section 9(1) and a location where the report is available  
25 pursuant to section 9(2).

26 (vi) The time and place for a public hearing on the proposed  
27 program.

1 (b) Hold a public hearing at which the public may comment on  
2 the proposed program, including the report required by section 9.

3 (c) Adopt a resolution establishing the program and setting  
4 forth its terms and conditions, including all of the following:

5 (i) Matters required by section 9 to be included in the report.  
6 For this purpose, the resolution may incorporate the report or an  
7 amended version thereof by reference.

8 (ii) A description of which aspects of the program may be  
9 amended without a new public hearing and which aspects may be  
10 amended only after a new public hearing is held.

11 (2) A property assessed clean energy program may be amended by  
12 resolution of the governing body. Adoption of the resolution shall  
13 be preceded by a public hearing if required pursuant to subsection  
14 (1) (c).

15 Sec. 9. (1) The report on the proposed program required under  
16 section 7 shall include all of the following:

17 (a) A form of contract between the local unit of government  
18 and record owner governing the terms and conditions of financing  
19 and assessment under the program.

20 (b) Identification of an official authorized to enter into a  
21 program contract on behalf of the local unit of government.

22 (c) A maximum aggregate annual dollar amount for all financing  
23 to be provided by the local unit of government under the program.

24 (d) An application process and eligibility requirements for  
25 financing energy projects under the program.

26 (e) A method for determining interest rates on assessment  
27 installments, repayment periods, and the maximum amount of an

1 assessment.

2 (f) Explanation of how assessments will be made and collected  
3 consistent with section 13(2).

4 (g) A plan for raising capital to finance improvements under  
5 the program. The plan may include any of the following:

6 (i) The sale of bonds or notes, subject to the revised  
7 municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

8 (ii) Amounts to be advanced by the local unit of government  
9 through funds available to it from any other source.

10 (iii) Owner-arranged financing from a commercial lender. Under  
11 owner-arranged financing, the local unit of government may impose  
12 an assessment pursuant to section 11 and forward payments to the  
13 commercial lender or the record owner may pay the commercial lender  
14 directly.

15 (h) Information regarding all of the following, to the extent  
16 known, or procedures to determine the following in the future:

17 (i) Any reserve fund or funds to be used as security for bonds  
18 or notes described in subdivision (g).

19 (ii) Any application, administration, or other program fees to  
20 be charged to record owners participating in the program that will  
21 be used to finance costs incurred by the local unit of government  
22 as a result of the program.

23 (i) A requirement that the term of an assessment not exceed  
24 the useful life of the energy project paid for by the assessment.

25 (j) A requirement for an appropriate ratio of the amount of  
26 the assessment to the assessed value of the property.

27 (k) A requirement that the record owner of property subject to

1 a mortgage obtain written consent from the mortgage holder before  
2 participating in the program.

3 (l) Provisions for marketing and participant education.

4 (m) Provisions for adequate debt service reserve fund.

5 (n) Quality assurance and antifraud measures.

6 (o) A requirement that a baseline energy audit be conducted  
7 before an energy project is undertaken, to establish future energy  
8 savings. After the energy project is completed, the local unit of  
9 government shall obtain verification that the renewable energy  
10 system or energy efficiency improvement was properly installed and  
11 is operating as intended.

12 (p) For an energy project financed with more than \$250,000.00  
13 in assessments, both of the following:

14 (i) A requirement for ongoing measurements that establish the  
15 savings realized by the record owner from the energy project.

16 (ii) A requirement that, in the contract for installation of  
17 the energy project, the contractor guarantee to the record owner  
18 that the energy project will achieve a savings-to-investment ratio  
19 greater than 1 and agree to pay the record owner, on an annual  
20 basis, any shortfall in savings below this level.

21 (2) The local unit of government shall make the report  
22 available for review on the local unit of government's website or  
23 at the office of the clerk or the official authorized to enter  
24 contracts on behalf of the local unit of government under the  
25 property assessed clean energy program.

26 Sec. 11. (1) A local unit of government may impose an  
27 assessment under a property assessed clean energy program only



1 pursuant to a written contract with the record owner of the  
2 property to be assessed.

3 (2) Before entering into a contract with a record owner under  
4 a program, the local unit of government shall verify all of the  
5 following:

6 (a) That there are no delinquent taxes, special assessments,  
7 or water or sewer charges on the property.

8 (b) That there are no delinquent assessments on the property  
9 under a property assessed clean energy program.

10 Sec. 13. (1) An assessment imposed under a property assessed  
11 clean energy program, including any interest on the assessment and  
12 any penalty, constitute a lien against the property on which the  
13 assessment is imposed until the assessment, including any interest  
14 or penalty, is paid in full. The lien runs with the property and  
15 has the same priority and status as other property tax and  
16 assessment liens. The local unit of government has all rights in  
17 the case of delinquency in the payment of an assessment as it does  
18 with respect to delinquent property taxes. When the assessment,  
19 including any interest and penalty, is paid, the lien shall be  
20 removed from the property.

21 (2) Installments of assessments due under a program shall be  
22 included in each summer and winter tax bill issued under the  
23 general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and  
24 shall be collected at the same time and in the same manner as taxes  
25 collected under the general property tax act, 1893 PA 206, MCL  
26 211.1 to 211.155. Alternatively, installments may be billed and  
27 collected as provided in a special assessment ordinance of general

1 applicability adopted by the local unit of government pursuant to  
2 state law or local charter.

3       Sec. 15. (1) A local unit of government may issue bonds or  
4 notes to finance energy projects under a property assessed clean  
5 energy program.

6       (2) Bonds or notes issued under subsection (1) shall not be  
7 general obligations of the local unit of government, but shall be  
8 secured by 1 or more of the following as provided by the governing  
9 body in the resolution or ordinance approving the bonds or notes:

10       (a) Payments of assessments on benefited property within the  
11 district or districts specified.

12       (b) Reserves established by the local unit of government from  
13 grants, bond or note proceeds, or other lawfully available funds.

14       (c) Municipal bond insurance, lines or letters of credit,  
15 public or private guaranties, standby bond purchase agreements,  
16 collateral assignments, mortgages, and any other available means of  
17 providing credit support or liquidity, including, but not limited  
18 to, arrangements described in section 315 of the revised municipal  
19 finance act, 2001 PA 34, MCL 141.2315.

20       (d) Tax increment revenues that may be lawfully available for  
21 such purposes.

22       (e) Any other amounts lawfully available for such purposes.

23       (3) A pledge of assessments, funds, or contractual rights made  
24 by a governing body in connection with the issuance of bonds or  
25 notes by a local unit of government under this act constitutes a  
26 statutory lien on the assessments, funds, or contractual rights so  
27 pledged in favor of the person or persons to whom the pledge is

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as amended November 30, 2010

1 given, without further action by the governing body. The statutory  
2 lien is valid and binding against all other persons, with or  
3 without notice.

4 (4) Bonds or notes of 1 series issued under this act may be  
5 secured on a parity with bonds or notes of another series issued by  
6 the local unit of government pursuant to the terms of a master  
7 indenture or master resolution entered into or adopted by the  
8 governing body of the local unit of government.

9 (5) Bonds or notes issued under this act are subject to the  
10 revised municipal finance act, 2001 PA 34, MCL 141.2101 to  
11 141.2821.

12 (6) Bonds or notes issued under this act, and interest payable  
13 on such bonds and notes, are exempt from all taxation by this state  
14 and its political subdivisions.

15 (7) Bonds or notes issued under this act further essential  
16 public and governmental purposes, including, but not limited to,  
17 reduced energy costs, reduced greenhouse gas emissions, economic  
18 stimulation and development, improved property valuation, and  
19 increased employment.

20 <<Sec. 17. [A commercial or industrial] electric customer that  
21 installs or modifies an  
22 electric energy efficiency improvement under a property assessed  
23 clean energy program is exempt from the energy optimization charges  
24 the customer would otherwise incur under section 89 or 91 of the clean,  
25 renewable, and efficient energy act, 2008 PA 295, MCL 460.1089 and  
26 460.1091, if the customer conducts a self-directed energy optimization  
27 plan under and subject to the applicable requirements of section 93 of  
the clean, renewable, and efficient energy act, 2008 PA 295, MCL

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1 460.1093. These requirements include, but are not limited to, the  
2 requirement that the plan provide for aggregate energy savings that  
3 each year meet or exceed the energy optimization standards based on  
4 the electricity purchases in the previous year for the site or sites  
5 covered by the self-directed plan.>>

6 Sec. 19. (1) A local unit of government may join with any  
7 other local unit of government, or with any person, or with any  
8 number or combination thereof, by contract or otherwise as may be  
9 permitted by law, for the implementation of a property assessed  
10 clean energy program, in whole or in part.

11 (2) If a property assessed clean energy program is implemented  
12 jointly by 2 or more local units of government pursuant to  
13 subsection (1), a single public hearing held jointly by the  
14 cooperating local units of government is sufficient to satisfy the  
15 requirements of section 7(1)(b).

<<Enacting section 1. This act does not take effect unless Senate  
Bill No. 1502 of the 95th Legislature is enacted into law.>>