

**SUBSTITUTE FOR
HOUSE BILL NO. 5640**

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 real property; to provide for the financing of such programs through voluntary property assessments 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 the installation or
11 modification of equipment, devices, or materials intended to
12 decrease energy consumption, including, but not limited to, all of
13 the following:

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

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

21 (iii) Automated energy control systems.

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

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

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

27 (vii) Energy recovery systems.

1 (viii) Day lighting systems.

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

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

8 (c) "Governing body" means the county board of commissioners
9 of a county, the township board of a township, or the council or
10 other similar elected legislative body of a city or village.

11 (d) "Local unit of government" means a county, township, city,
12 or village.

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

19 (f) "Property" means privately owned real property located
20 within the local unit of government.

21 (g) "Property assessed clean energy program" or "program"
22 means a program as described in section 5(2).

23 (h) "Record owner" means the person or persons possessed of
24 the most recent fee title or land contract vendee's interest in
25 property as shown by the records of the county register of deeds.

26 (i) "Renewable energy resource" means a resource that
27 naturally replenishes over a human, not a geological, time frame

1 and that is ultimately derived from solar power, water power, or
2 wind power. Renewable energy resource does not include petroleum,
3 nuclear, natural gas, or coal. A renewable energy resource comes
4 from the sun or from thermal inertia of the earth and minimizes the
5 output of toxic material in the conversion of the energy and
6 includes, but is not limited to, all of the following:

7 (i) Biomass.

8 (ii) Solar and solar thermal energy.

9 (iii) Wind energy.

10 (iv) Geothermal energy.

11 (v) Methane gas captured from a landfill.

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

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

22 (2) Under the program, the local unit of government may enter
23 into a contract with the record owner of property within a district
24 to finance or refinance energy efficiency improvements or the
25 acquisition, installation, or improvement of 1 or more renewable
26 energy systems on the property. The contract shall provide for the
27 repayment of the cost of the energy efficiency improvements or

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

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

11 (a) Adopt a resolution of intent that includes all of the
12 following:

13 (i) A finding that the financing of renewable energy systems
14 and energy efficiency improvements is a valid public purpose.

15 (ii) A statement of intent to provide funds for energy
16 efficiency improvements and renewable energy systems to be repaid
17 by assessments on the property benefited, with the agreement of the
18 record owners.

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

21 (iv) The types of energy efficiency improvements and renewable
22 energy systems 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 a description of which
5 aspects of the program may be amended without a new public hearing
6 and which aspects may be amended only after a new public hearing is
7 held.

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

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

14 (a) A form of contract between the local unit of government
15 and record owner governing the terms and conditions of financing
16 and assessment under the program.

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

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

21 (d) An application process and eligibility requirements for
22 financing energy efficiency improvements or renewable energy
23 systems under the program.

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

27 (f) Explanation of how assessments will be made and collected

1 consistent with section 13(2).

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

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

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

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

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

12 (ii) Any application, administration, or other program fees to
13 be charged to property owners participating in the program that
14 will be used to finance costs incurred by the local unit of
15 government as a result of the program.

16 (2) The local unit of government shall make the report
17 available for review on the local unit of government's website or
18 at the office of the clerk or the official authorized to enter
19 contracts on behalf of the local unit of government under the
20 property assessed clean energy program.

21 Sec. 11. (1) A local unit of government may impose an
22 assessment under a property assessed clean energy program only
23 pursuant to a written contract with the record owner of the
24 property to be assessed.

25 (2) Before entering into a contract with a property owner
26 under a program, the local unit of government shall verify all of
27 the following:

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

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

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

16 (2) Installments of assessments due under a program shall be
17 included in each summer and winter tax bill issued under the
18 general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and
19 shall be collected at the same time and in the same manner as taxes
20 collected under the general property tax act, 1893 PA 206, MCL
21 211.1 to 211.155. Alternatively, installments may be billed and
22 collected as provided in a special assessment ordinance of general
23 applicability adopted by the local unit of government pursuant to
24 state law or local charter.

25 Sec. 15. (1) A local unit of government may issue bonds or
26 notes to finance energy efficiency improvements and renewable
27 energy systems under a property assessed clean energy program.

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

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

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

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

15 (d) Tax increment revenues that may be lawfully available for
16 such purposes.

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

18 (3) A pledge of assessments, funds, or contractual rights made
19 by a governing body in connection with the issuance of bonds or
20 notes by a local unit of government under this act constitutes a
21 statutory lien on the assessments, funds, or contractual rights so
22 pledged in favor of the person or persons to whom the pledge is
23 given, without further action by the governing body. The statutory
24 lien is valid and binding against all other persons, with or
25 without notice.

26 (4) Bonds or notes of 1 series issued under this act may be
27 secured on a parity with bonds or notes of another series issued by

1 the local unit of government pursuant to the terms of a master
2 indenture or master resolution entered into or adopted by the
3 governing body of the local unit of government.

4 (5) A local unit of government may issue its general
5 obligation bonds or notes under this act for the purpose of:

6 (a) Establishing a reserve fund to secure bonds or notes
7 issued pursuant to subsection (1).

8 (b) Paying the costs associated with creating a property
9 assessed clean energy program, including, but not limited to, legal
10 fees, the cost of preparing forms of contracts, the cost of
11 establishing procedures and regulations, the cost of preparing the
12 report described in section 9(1), and the cost of conducting
13 preliminary energy audits within the local unit of government.

14 (6) Bonds or notes issued under this act are subject to the
15 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
16 141.2821.

17 (7) Bonds or notes issued under this act, and interest payable
18 on such bonds and notes, are exempt from all taxation by this state
19 and its political subdivisions.

20 (8) Bonds or notes issued under this act further essential
21 public and governmental purposes, including, but not limited to,
22 reduced energy costs, reduced greenhouse gas emissions, economic
23 stimulation and development, improved property valuation, and
24 increased employment.

25 Sec. 17. (1) A local unit of government may join with any
26 other local unit of government, or with any person, or with any
27 number or combination thereof, by contract or otherwise as may be

1 permitted by law, for the implementation of a property assessed
2 clean energy program, in whole or in part.

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