

HOUSE BILL No. 5508

March 21, 2012, Introduced by Rep. Irwin and referred to the Committee on Tax Policy.

A bill to amend 2010 PA 270, entitled
"Property assessed clean energy act,"
by amending sections 3, 9, and 15 (MCL 460.933, 460.939, and
460.945).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

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

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

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

3 (ii) Storm windows and doors; multi-glazed windows and doors;
4 heat-absorbing or heat-reflective glazed and coated window and door
5 systems; and additional glazing, reductions in glass area, and
6 other window and door system modifications that reduce energy
7 consumption.

8 (iii) Automated energy control systems.

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

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

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

14 (vii) Energy recovery systems.

15 (viii) Day lighting systems.

16 (ix) Installation or upgrade of electrical wiring or outlets to
17 charge a motor vehicle that is fully or partially powered by
18 electricity.

19 (x) ~~Measures~~ **A MEASURE** to reduce the usage of water or
20 ~~increases~~ **INCREASE** the efficiency of water usage.

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

24 (c) "Energy project" means the installation or modification of
25 an energy efficiency improvement or the acquisition, installation,
26 or improvement of a renewable energy system.

27 (d) "Governing body" means the county board of commissioners

1 of a county, the township board of a township, or the council or
2 other similar elected legislative body of a city or village.

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

5 (f) "Person" means an individual, firm, partnership,
6 association, corporation, unincorporated joint venture, or trust,
7 organized, permitted, or existing under the laws of this state or
8 any other state, including a federal corporation, or a combination
9 thereof. However, person does not include a local unit of
10 government.

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

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

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

18 (j) "Renewable energy resource" means a resource that
19 naturally replenishes over a human, ~~not~~ **RATHER THAN** a geological,
20 time frame, ~~and that is ultimately derived from solar power, water~~
21 ~~power, or wind power. Renewable energy resource does not include~~
22 ~~petroleum, nuclear, natural gas, or coal. A renewable energy~~
23 ~~resource comes from the sun or from thermal inertia of the earth,~~
24 ~~and minimizes the output of toxic material in the conversion of the~~
25 **WHICH TO A USABLE FORM OF energy and includes, MINIMIZES THE OUTPUT**
26 **OF TOXIC MATERIALS. RENEWABLE ENERGY RESOURCE DOES NOT INCLUDE**
27 **PETROLEUM, NUCLEAR MATERIAL, NATURAL GAS, OR COAL. RENEWABLE ENERGY**

RESOURCE INCLUDES, but is not limited to, all of the following:

(i) Biomass.

(ii) Solar and solar thermal energy.

(iii) Wind energy.

(iv) Geothermal energy.

(v) Methane gas captured from a landfill.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 ~~—— (k) A requirement that the record owner of property subject to~~
26 ~~a mortgage obtain written consent from the mortgage holder before~~
27 ~~participating in the program.~~

- 1 **(K)** ~~(l)~~—Provisions for marketing and participant education.
- 2 **(I)** ~~(m)~~—Provisions for **AN** adequate debt service reserve fund.
- 3 **(M)** ~~(n)~~—Quality assurance and antifraud measures.
- 4 **(N)** ~~(o)~~—A requirement that a baseline energy audit be
- 5 conducted before an energy project is undertaken, to establish
- 6 future energy savings. After the energy project is completed, the
- 7 local unit of government shall obtain verification that the
- 8 renewable energy system or energy efficiency improvement was
- 9 properly installed and is operating as intended.
- 10 **(O)** ~~(p)~~—For an energy project financed with more than
- 11 \$250,000.00 in assessments, both of the following:
- 12 (i) A requirement for ongoing measurements that establish the
- 13 savings realized by the record owner from the energy project.
- 14 (ii) A requirement that, in the contract for installation of
- 15 the energy project, the contractor guarantee to the record owner
- 16 that the energy project will achieve a savings-to-investment ratio
- 17 greater than 1 and agree to pay the record owner, on an annual
- 18 basis, any shortfall in savings below this level.
- 19 (2) The local unit of government shall make the report
- 20 available for review on the local unit of government's website or
- 21 at the office of the clerk or the official authorized to enter
- 22 contracts on behalf of the local unit of government under the
- 23 property assessed clean energy program.
- 24 Sec. 15. (1) A local unit of government may issue bonds or
- 25 notes to finance energy projects under a property assessed clean
- 26 energy program.
- 27 (2) Bonds or notes issued under subsection (1) shall not be

1 general obligations of the local unit of government, but shall be
2 secured by 1 or more of the following as provided by the governing
3 body in the resolution or ordinance approving the bonds or notes:

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

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

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

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

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

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

25 (4) Bonds or notes of 1 series issued under this act may be
26 secured on a parity with bonds or notes of another series issued by
27 the local unit of government pursuant to the terms of a master

1 indenture or master resolution entered into or adopted by the
2 governing body of the local unit of government.

3 (5) A LOCAL UNIT OF GOVERNMENT MAY ISSUE ITS GENERAL
4 OBLIGATION BONDS OR NOTES UNDER THIS ACT FOR ANY OF THE FOLLOWING
5 PURPOSES:

6 (A) ESTABLISHING A RESERVE FUND TO SECURE BONDS OR NOTES
7 ISSUED UNDER 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 FOR 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) ~~(5)~~ Bonds or notes issued under this act are subject to
15 the revised municipal finance act, 2001 PA 34, MCL 141.2101 to
16 141.2821.

17 (7) ~~(6)~~ Bonds or notes issued under this act, and interest
18 payable on ~~such~~ **THESE** bonds and notes, are exempt from all taxation
19 by this state and its political subdivisions.

20 (8) ~~(7)~~ 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.