PROPERTY ASSESSED CLEAN ENERGY ACT

Act 270 of 2010

AN ACT to authorize local units of government to adopt property assessed clean energy programs and to create districts to promote renewable energy systems, energy efficiency improvements, water usage improvements, and environmental hazard projects by owners of certain real property; to provide for the financing of the 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, energy efficiency improvements, water usage improvements, and environmental hazard projects 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.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

The People of the State of Michigan enact:

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460.931 Short title.

Sec. 1.

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

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010

460.933 Definitions.

Sec. 3.

As used in this act:

(a) "Anaerobic digester" means a facility that uses microorganisms to break down biodegradable material in the absence of oxygen, producing methane and an organic product.

(b) "Anaerobic digester energy system" means an anaerobic digester and the devices used to generate electricity or heat from methane produced by the anaerobic digester or to store the methane for the future generation of electricity or heat.

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

(d) "Energy efficiency improvement" means the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, any of the following:

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

(ii) 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.

(iii) Automated energy control systems.

(iv) Heating, ventilating, or air-conditioning and distribution systems.

(v) Caulking, weather-stripping, or air sealing.

(vi) Lighting fixtures.

(vii) Energy recovery systems.

(viii) Day lighting systems.

(ix) Electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.

(x) Measures to reduce the usage of water or increase the efficiency of water usage.

(xi) Any other equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

(e) "Energy project" means any of the following:

(i) An energy efficiency improvement.

(ii) The acquisition, installation, replacement, or modification of a renewable energy system or anaerobic digester energy system.

(f) "Environmental hazard project" means the acquisition, installation, replacement, or modification of equipment, devices, or materials intended to address environmental hazards, including, but not limited to, measures to do any of the following:

(i) Mitigate lead, heavy metal, or PFAS contamination in potable water systems.

(ii) Mitigate the effects of floods or drought.

(iii) Increase the resistance of property against severe weather.

(iv) Mitigate lead paint contamination.

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

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

(i) "New construction energy project" means an energy project to which either of the following applies:

(i) It occurs at a newly constructed building or other structure.

(ii) It consists of significant modifications to an existing building or other structure.

(j) "Person" means an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of this state or any other state, including, but not limited to, a federal corporation, or a combination thereof. However, person does not include a local unit of government.

(k) "Project" means an environmental hazard project or energy project.

(l) "Property" means any of the following privately owned real property located within the local unit of government:

(i) Commercial property.

(ii) Industrial property.

(iii) Agricultural property.

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

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

(o) "Renewable energy resource" means a resource that naturally replenishes over a human, rather than a geological, time frame and whose conversion to a usable form of energy minimizes the output of toxic materials. Renewable energy resource does not include petroleum, nuclear material, natural gas, or coal. Renewable energy resource includes, but is not limited to, all of the following:

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(i) Biomass.
(ii) Solar and solar thermal energy.
(iii) Wind energy.
(iv) Geothermal energy.
(v) Methane gas captured from a landfill.

(p) "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.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2017, Act 242, Eff. Mar. 21, 2018 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

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460.935 Property assessed clean energy program; establishment by local unit of government; contract with record owner of property; financing.

Sec. 5.

(1) Pursuant to section 7, a local unit of government may establish a property assessed clean energy program and may create a district or districts under the program.

(2) Under a property assessed clean energy program, the local unit of government may enter into a contract with the record owner of property within a district to finance or refinance 1 or more projects on the property. The contract may provide for the repayment of the cost of a project through assessments on the property benefited. The financing or refinancing may include the cost of materials and labor necessary for the project and the amount of permit fees, inspection fees, application and administrative fees, bank fees, or any other fees that may be incurred by the record owner for the installation on a specific or pro rata basis, as determined by the local unit of government.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

460.937 Establishment; actions to be taken by governing body; amendment by resolution.

Sec. 7.

(1) To establish a property assessed clean energy program, a governing body shall take the following actions in the following order:

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

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

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

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

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

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

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

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

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

(i) Matters required by section 9(1) to be included in the report. For this purpose, the resolution may incorporate the report or an amended version of the report by reference.

(ii) A description of aspects of the program that may be amended without holding a new public hearing and aspects that may be amended only after a new public hearing is held.

(2) The governing body may amend a property assessed clean energy program by resolution. Before adopting the resolution, the governing body shall hold a public hearing if required under subsection (1)(c).

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

460.939 Report; contents; availability.

Sec. 9.

(1) The report on the proposed property assessed clean energy program required under section 7 shall include all of the following:

(a) A form of contract between the local unit of government and the 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 projects.

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

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

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

(i) The sale of bonds or notes, subject to section 15.

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

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

(h) Procedures to determine in the future or, to the extent known, information regarding each of the following:

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

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

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

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

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

(l) Provisions for marketing and participant education.

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

(n) Quality assurance and antifraud provisions.

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

(p) For a project financed with more than $250,000.00 in assessments, both of the following:

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

(ii) Unless waived by the record owner, a requirement that the contractor guarantee to the record owner that the project will achieve a savings-to-investment ratio greater than 1 and agree to pay the record owner, on an annual basis, any shortfall in savings below this level. This subparagraph does not apply to a new construction energy project.

(q) For a new construction energy project, a requirement that the building or other structure exceed applicable requirements of the Michigan uniform energy code, parts 10 and 10a of the construction code, R 408.31059 to 408.31071a and 408.31087 to 408.31099 of the Michigan Administrative Code.

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

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History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2017, Act 242, Eff. Mar. 21, 2018 ;-- Am. 2023, Act 106, Eff. Feb. 13, 2024

460.941 Imposition of assessment; written contract; verification.

Sec. 11.

(1) A local unit of government may impose an assessment under a property assessed clean energy program only pursuant to a written contract entered into under section 5(2) with the record owner of the property to be assessed.

(2) Before entering into a contract with the record owner under section 5(2), the local unit of government must verify that none of the following are delinquent with respect to the property:

(a) A tax, special assessment, or water or sewer charge.

(b) An assessment for another project under a property assessed clean energy program.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

460.943 Assessment as lien against property; installments to be included in summer and winter tax bill.

Sec. 13.

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

(2) Installments of assessments due under a property assessed clean energy program shall be managed as provided in 1 of the following:

(a) Included in each summer and winter tax bill issued under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and collected at the same time and in the same manner as taxes collected under that act.

(b) Billed and collected as provided in a special assessment ordinance of general applicability adopted by the local unit of government pursuant to state law or local charter.

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History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

460.945 Bonds or notes; issuance.

Sec. 15.

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

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

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

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

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

(d) Tax increment revenues that may be lawfully available for that purpose.

(e) Any other resources lawfully available for that purpose.

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

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

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

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

(7) Bonds or notes issued under this act further essential public and governmental purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions, improved public health, protection against climate hazards and other environmental hazards, economic stimulation and development, improved property valuation, and increased employment.

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History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

460.947 Self-directed energy waste reduction plan.

Sec. 17.

A commercial or industrial electric customer that installs or modifies an electric energy efficiency improvement under a property assessed clean energy program is exempt from the energy optimization charges the customer would otherwise incur under section 89 or 91 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1089 and 460.1091, if the customer conducts a self-directed energy waste reduction plan under and subject to the applicable requirements of section 93 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1093. These requirements include, but are not limited to, the requirement that the plan provide for aggregate energy savings that each year meet or exceed the energy waste reduction standards based on the electricity purchases in the previous year for the site or sites covered by the self-directed plan.

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010 ;-- Am. 2023, Act 107, Eff. Feb. 13, 2024

460.949 Property assessed clean energy program; joint implementation.

Sec. 19.

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

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

History: 2010, Act 270, Imd. Eff. Dec. 14, 2010