

# Legislative Analysis



## RESIDENTIAL CLEAN ENERGY PROGRAMS

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**House Bill 5397 (Reported from Committee as Substitute H-2)**

**Sponsor: Rep. Joe Haveman**

*(Enacted as PA 408 of 2014)*

**Committee: Energy and Technology**

### First Analysis (6-10-14)

**BRIEF SUMMARY:** The bill creates a new act to enable certain municipalities to establish a program under which financing could be provided to the record owners of residential property for energy efficiency projects.

The new act would be modeled on Public Act 270 of 2010, which created the Property Assessed Clean Energy Act, and which enables municipalities to provide financing to the record owners of privately-owned commercial or industrial properties for specified energy and water conservation projects.

**FISCAL IMPACT:** Because the lenders, borrowers, and degree to which the loans would be granted cannot be identified, it is not possible to determine any state or local fiscal impact.

### **THE APPARENT PROBLEM:**

Legislation enacted in 2010 enables municipalities to create a program that provides property owners financing for energy-efficient upgrades. The intent was to assist the owners to make expensive upgrades now and be able to pay off the upgrades with the energy savings created by the upgrades. For example, installing solar roof panels could lower a property owner's monthly electric bill, and those savings could be used to pay the cost of the panels over the useful lifetime of the upgrade, if not sooner. As a result, the energy footprint of a property can be reduced, less greenhouse gasses emitted, a structure made more comfortable, and the savings used to pay off the project so that the property owner has little to no additional monthly or yearly expenditures. However, the legislation only applies to commercial or industrial properties.

Some municipalities have expressed an interest in creating programs to serve homeowners as a way to reduce the energy demand for municipally-owned electric utilities and at the same time, reduce energy bills for residents. However, many owners of older, drafty, poorly insulated homes find it too expensive to properly upgrade their properties to be more energy efficient. Plus, it can be difficult and confusing for a homeowner to sift through the literature and advertisements about which furnace is best, replacement windows, whether solar roof panels heat enough hot water for the family to make it worth the cost, and so on. Legislation has been introduced to allow municipalities that own and operate an electric utility to structure programs for homeowners who are served by that utility similar to that available for businesses and industrial customers.

## ***THE CONTENT OF THE BILL:***

House Bill 5397 creates the Municipal Utility Residential Clean Energy Program Act. A brief description follows.

Title. The act is called the Municipal Utility Residential Clean Energy Program Act.

Program description. Following prescribed procedures, a municipality (a city, village, or township, all or some of whose residents are served by a municipal electric utility) may establish a residential clean energy program (RCEP), and designate, from time to time, one or more districts within its jurisdiction where residents are served by a municipal electric utility. Under an RCEP, a municipality may enter into a contract with a record owner (meaning the fee title holder or land contract vendee of record) of property within a district to finance or refinance one or more energy projects on the property. "Energy projects, as defined in the act relate to "energy efficiency improvements" and "renewable energy systems." Both of those terms are also defined in the act. (See *Definitions* below.)

The financing or refinancing may include the cost of materials and labor necessary for the installation; home energy audit costs; permit fees; inspection fees; application and administrative fees; bank fees; and all other fees that may be incurred by the property owner under the installation on a specific or pro rata basis, as determined by the municipality.

Steps to establish program. To establish a residential clean energy program (RCEP), the municipality's governing body would have to:

- Adopt a resolution of intent that includes: (1) a finding that the financing of energy projects is a valid public purpose; (2) a statement of intent to provide funds for financing energy projects, which could be repaid by charges on the electric utility bills for the property benefited, with the agreement of the record owners; (3) a description of the proposed arrangements for financing the program; (4) the types of energy projects that may be financed; (5) a reference to a report on the proposed program and where the report is available; and (6) the time and place for a public hearing on the proposed program.
- Hold a public hearing for public comment on the proposed program, including the required program report.
- Adopt a resolution or ordinance establishing the program and setting forth its terms and conditions. The resolution must (1) include the matters required to be contained in the report—the report itself, or an amended version of it, may be incorporated by reference to satisfy this requirement; and (2) if the program were established by resolution, specify which aspects of the program are amendable without a new public hearing and which aspects are amendable only after a new public hearing.

Program amendment. An RCEP may be amended by resolution of the governing body or ordinance. The governing body must hold a hearing before amending the program only if this is required under the terms of the resolution establishing the program.

RCEP financing. An RCEP may be administered by a nonprofit corporation, including, but not limited to, one formed under Section 40 of the Home Rule City Act. The nonprofit corporation's administration of the program may be funded by money appropriated by the municipality, transferred from the municipality's electric utility, if any, or provided by private sources.

An RCEP may provide for financing energy products through loans made to property owners by the municipal electric utility, a nonprofit corporation described above, or by commercial lenders. Loans by commercial lenders could be facilitated by the nonprofit corporation.

If a nonprofit corporation makes loans to property owners, interest charged on the unpaid balance would be capped at a rate of not more than the adjusted prime rate as determined under Section 23 of the Revenue Act, *plus 4 percent* ; the loan would have to be repaid in monthly installments, which could not exceed the anticipated useful life of the project or 180 months (15 years), whichever is less; and the lender would have to comply with all state and federal laws applicable to the extension of credit for home improvements.

An RCEP may provide for billing customers of the municipal electric utility any fees and the monthly installment payments as a per-meter charge on an electric bill. The payment would be considered part of the charges for electric services to the property for purposes of enforcement as provided under Section 21 of the Revenue Bond Act. (Generally speaking, this means that the balance owed on the project would attach to the property as a lien in the same manner as taxes.)

Electric service could be shut off for nonpayment of the per-meter charge in the same manner and under the same procedures as used to enforce nonpayment of other electric service charges. If notice of an RCEP loan is recorded with the register of deeds for the county in which the property is located, the obligation to pay the per-meter charge would run with the land and be binding on future customers contracting for electric service to the property.

Required report; availability for review. The report on a proposed RCEP must be made available for review on the municipality's website or at the office of the clerk or other official authorized to enter into program contracts. The report must include all of the following information:

- A form of contract between the municipality and the record owner governing the terms and conditions of financing and assessment under the program.
- The official authorized to enter into program contracts on behalf of the municipality.

- A maximum aggregate annual dollar amount for all financing to be provided by the local unit of government under the program.
- An application process and eligibility requirements for financing energy projects under the program.
- A method for determining interest rates on loan installments, repayment periods, and the maximum amount of a loan.
- An explanation of how monthly installment payments on loans will be billed and collected.
- A plan for raising capital to finance improvements under the program. The plan may include: (1) the sale of bonds, subject to the Revised Municipal Finance Act (MCL 141.2101 to 141.2821); (2) amounts to be advanced by the municipality through funds available to it from any other source; and (3) owner-arranged financing from a commercial lender, whether or not facilitated by a nonprofit corporation. Under owner-arranged financing, the municipal electric utility may collect monthly installment payments on the electric utility bills and forward payments to the commercial lender or the record owner may pay the commercial lender directly.
- Information regarding all of the following, to the extent known, or procedures to determine the following in the future: (1) any reserve fund or funds to be used as security for bonds or notes; and (2) any application, administration, or other program fees to be charged to participating record owners that will be used to finance costs incurred by the municipality as a result of the record owner's participation.
- A requirement that the term for loan repayment not exceed the useful life of the energy project paid for by the loan or 180 months (15 years), whichever is less.
- Provisions for marketing and participant education.
- Provisions for adequate debt service reserve funds.
- Quality assurance and antifraud measures.
- A requirement that a baseline home energy audit be conducted before an energy project is undertaken, to establish future energy savings. After the energy project is completed, the municipality must obtain verification that the renewable energy system or energy efficiency improvement was properly installed and is operating as intended.

Definitions. Terms defined in the bill include:

**"District"** means a district created under a clean energy program by a municipality. A municipality may create more than one district within its territorial jurisdiction, and districts may be separate, overlapping, or coterminous.

**"Energy efficiency improvement"** means equipment, devices, or materials intended to decrease energy consumption, including, but not limited to, all of the following:

- Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.

- Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflecting glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications to reduce energy consumption.
- Automated energy control systems.
- Heating, ventilating, or air-conditioning and distribution system modifications or replacements.
- Air sealing, caulking, and weather-stripping.
- Lighting fixtures that reduce the lighting system's energy use.
- Energy recovery systems.
- Day lighting systems.
- Electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.
- Measures to reduce water usage or to increase the efficiency of water usage.
- Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

**"Energy project"** means "the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system."

**"Governing body"** means the township board or the council or other elected legislative body of a city or village.

**"Home energy audit"** would mean an evaluation of the energy performance of a residential structure, by a qualified person using building-performance diagnostic equipment and complying with American National Standards Institute (ANSI) approved home energy audit standards, with that evaluation to meet both of the following requirements:

- Determine how best to optimize energy performance while maintaining or improving human comfort, health, and safety and durability of the structure.
- Include a baseline energy model and cost-benefit analysis for recommended energy efficiency improvements.

**"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 a federal corporation, or a combination thereof. However, person does not include a local unit of government."

**"Property"** means "privately owned residential real property located within the municipality."

**"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."

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

- Biomass.
- Solar and solar thermal energy.
- Wind energy.
- Geothermal energy.
- Methane gas captured from a landfill.

**"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 one or more renewable energy resources. Renewable energy system includes a biomass stove but does not include an incinerator or digester.

#### ***ARGUMENTS:***

##### ***For:***

The bill offers a market-driven approach to encourage energy conservation, create jobs, and save consumers money. Briefly stated, the bill enables a city, township, or village whose residents receive electricity from a municipal electric utility to create a program by which the municipality could offer loans to homeowners to make energy efficient upgrades to their properties. An energy efficiency audit would identify improvements that would be prudent. This is important as some upgrades may result in an energy savings, but not enough to pay off the cost of the upgrade in a reasonable time period. The bill would give municipalities flexibility in structuring how to fund the projects, too. For example, a municipality could set its own interest rate for loan repayments, as long as the rate did not exceed the cap in the bill. Moreover, having one place to go for financing for energy audits and for property-specific information and recommendations will save homeowners time and confusion as to which projects will pay for themselves within a reasonable timeframe.

The bill also allows for on-bill financing, something that about 20 other states currently allow. Under the bill, the cost of the energy upgrades will be tied to the property rather than to the owner. If the owner sold the property, the balance of the loan would be repaid by the new homeowner. On-bill financing offers a great incentive for the homeowner who, for example, would love to replace the furnace and install new double-paned replacement windows, but who is unsure of how long he or she will be living in the home. Having an energy efficiency project repayment balance attached to the property should not act as a deterrent for home sellers once it is explained to a potential buyer that the buyer will be able to enjoy the benefits of lower energy bills and greater comfort at a fraction of the cost since any previous owners have already paid part of the bill.

In addition, the bill may act as an incentive for more landlords to make improvements to rental properties. All too often, owners of rental properties either can't afford or are unwilling to make energy efficiency improvements in their rental units. Since the cost for a project would be added to the tenant's electric bill, more property owners may be willing to make the upgrades. This would be especially beneficial for low-income housing, as a property owner would not have to raise the rent to cover the cost of the improvements, and the tenant would enjoy lower utility bills, even with the monthly costs of the project included.

***Response:***

The bill is a great first start, but some advocates would like to see some additional tweaking. For instance, some would like more clarity regarding partial bill payments. If a person was able only pay a portion of the electric bill, would any of the partial payment go towards the energy efficiency project loan? This is important, as the loan acts as a lien. Thus, not only could a person have their power shut off for nonpayment, the person could lose the home. Perhaps some clarity on this matter would be helpful for all concerned.

***POSITIONS:***

The following entities testified or submitted testimony in support of, or indicated support for, House Bill 5397 on 3-11-14, 6-3-14, and/or 6-4-14:

Office of the Governor  
City of Holland/Holland Board of Public Works  
Michigan Township Association  
Michigan Municipal League  
Michigan Energy Efficiency Contractors Association (MEECA)  
Michigan Saves  
Michigan Conservative Energy Forum  
Michigan League of Conservation Voters  
Michigan Energy Innovation Council (MI-EIBC)  
Michigan Municipal Electric Association  
Schneider Electric, Michigan City, IN  
Home Builders Association of Michigan  
Michigan Environmental Council

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