

HOUSE BILL No. 5417

March 19, 2014, Introduced by Reps. Irwin, Barnett, Switalski, Slavens, Hovey-Wright, Robinson, Townsend, Stallworth, Singh, Kosowski, Lipton and Oakes and referred to the Committee on Energy and Technology.

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.

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

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

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

11 (iii) Automated energy control systems.

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

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

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

17 (vii) Energy recovery systems.

18 (viii) Day lighting systems.

19 (ix) Installation or upgrade of electrical wiring or outlets to
20 charge a motor vehicle that is fully or partially powered by
21 electricity.

22 (x) Measures to reduce the usage of water or ~~increases~~
23 **INCREASE** the efficiency of water usage.

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

27 (c) "Energy project" means the installation or modification of

1 an energy efficiency improvement or the acquisition, installation,
2 or improvement of a renewable energy system.

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

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

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

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

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

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

21 (j) "Renewable energy resource" means a resource that
22 naturally replenishes over a human, ~~not~~ **RATHER THAN** a geological,
23 time frame, ~~and that is ultimately derived from solar power, water~~
24 ~~power, or wind power. Renewable energy resource does not include~~
25 ~~petroleum, nuclear, natural gas, or coal. A renewable energy~~
26 ~~resource comes from the sun or from thermal inertia of the earth,~~
27 ~~and minimizes the output of toxic material in the conversion of the~~

1 WHICH TO A USABLE FORM OF energy and ~~includes~~, MINIMIZES THE OUTPUT
2 OF TOXIC MATERIALS. RENEWABLE ENERGY RESOURCE DOES NOT INCLUDE
3 PETROLEUM, NUCLEAR MATERIAL, NATURAL GAS, OR COAL. RENEWABLE ENERGY
4 RESOURCE INCLUDES, but is not limited to, all of the following:

5 (i) Biomass.

6 (ii) Solar and solar thermal energy.

7 (iii) Wind energy.

8 (iv) Geothermal energy.

9 (v) Methane gas captured from a landfill.

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

16 Sec. 9. (1) ~~The~~ BEFORE ESTABLISHING A PROPERTY ASSESSED CLEAN
17 ENERGY PROGRAM, A LOCAL UNIT OF GOVERNMENT SHALL PREPARE A report
18 on the proposed program. ~~required under section 7~~ THE REPORT shall
19 include all of the following:

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

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

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

27 (d) An application process and eligibility requirements for

1 financing energy projects under the program.

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

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

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

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

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

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

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

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

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

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

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

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

6 (K) ~~(l)~~ Provisions for marketing and participant education.

7 (L) ~~(m)~~ Provisions for **AN** adequate debt service reserve fund.

8 (M) ~~(n)~~ Quality assurance and antifraud measures.

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

15 (O) ~~(p)~~ For an energy project financed with more than
16 \$250,000.00 in assessments, both of the following:

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

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

24 (2) The local unit of government shall make the report
25 available for review on the local unit of government's website or
26 at the office of the clerk or the official authorized to enter
27 contracts on behalf of the local unit of government under the

1 property assessed clean energy program.

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

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

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

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

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

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

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

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

1 lien is valid and binding against all other persons, with or
2 without notice.

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

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

11 (A) **ESTABLISHING A RESERVE FUND TO SECURE BONDS OR NOTES**
12 **ISSUED UNDER SUBSECTION (1).**

13 (B) **PAYING THE COSTS ASSOCIATED WITH CREATING A PROPERTY**
14 **ASSESSED CLEAN ENERGY PROGRAM, INCLUDING, BUT NOT LIMITED TO, LEGAL**
15 **FEEES, THE COST OF PREPARING FORMS FOR CONTRACTS, THE COST OF**
16 **ESTABLISHING PROCEDURES AND REGULATIONS, THE COST OF PREPARING THE**
17 **REPORT DESCRIBED IN SECTION 9(1), AND THE COST OF CONDUCTING**
18 **PRELIMINARY ENERGY AUDITS WITHIN THE LOCAL UNIT OF GOVERNMENT.**

19 (6) ~~(5)~~ Bonds or notes issued under this act are subject to
20 the revised municipal finance act, 2001 PA 34, MCL 141.2101 to
21 141.2821.

22 (7) ~~(6)~~ Bonds or notes issued under this act, and interest
23 payable on ~~such~~ **THESE** bonds and notes, are exempt from all taxation
24 by this state and its political subdivisions.

25 (8) ~~(7)~~ Bonds or notes issued under this act further essential
26 public and governmental purposes, including, but not limited to,
27 reduced energy costs, reduced greenhouse gas emissions, economic

- 1 stimulation and development, improved property valuation, and
- 2 increased employment.