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Senate Bills 47 and 48 (as passed by the Senate)  
Sponsor: Senator Tom Barrett  
Committee: Finance

Date Completed: 8-21-19

### **RATIONALE**

Solar panels and other alternative energy systems have been subject to various tax classifications over the past 20 years (see **BACKGROUND**). Most recently, a 2018 State Tax Commission memorandum specified that solar panels on a parcel classified as residential real property must be assessed as a component of the real property. In Michigan, annual increases in the taxable value of real property are generally limited to the lesser of 5.0% or the rate of inflation; however, an increase may exceed this limit if there is an ownership transfer or an addition to the parcel of real property. Thus, if a Michigan resident installed a solar panel system on his or her residential real property, he or she likely would pay more property taxes. Some feel that this discourages the installation of such systems, as the financial burden incurred for that installation would be amplified by increases in property taxes. Moreover, there is concern that not all jurisdictions are assessing alternative energy systems in the same manner. With these energy systems becoming more affordable and desirable, some have suggested modifying the General Property Tax Act to prohibit assessors from considering this type of property in their assessments.

### **CONTENT**

**Senate Bill 47** would amend the General Property Tax Act to specify that installing, replacing, or repairing an alternative energy system with a generating capacity of not more than 150 kilowatts would be considered normal maintenance if it were not a part of a structural addition or completion for the purposes of determining a property's taxable value.

**Senate Bill 48** would amend the General Property Tax Act to do the following:

- Delete the certification and resolution process for alternative energy personal property tax exemptions.
- Apply the alternative energy personal property exemption to taxes levied on an alternative energy system after the bill's effective date, provided that it met certain conditions.

The bills are tie-barred to each other.

### **Senate Bill 47**

The General Property Tax Act specifies that an assessor may not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of residential property for assessment purposes until the property is sold. The Act includes a list of repairs that are considered normal maintenance if they are not part of a structural addition or completion, such as outside painting, adding or replacing gutters and downspouts, or complete rewiring.

The bill would include in this list installing, replacing, or repairing an alternative energy system, without regard to ownership of the system, with a generating capacity of not more than 150 kilowatts, the annual energy output of which did not exceed the annual energy consumption measured by the utility-provided electrical meter on the system to which it was connected.

"Alternative energy system" would mean that term as defined in Section 2 of the Michigan Next Energy Authority Act. (The Michigan Next Energy Authority Act defines "alternative energy system" as the small-scale generation or release of energy from one or any combination of the following types of energy systems: a) a fuel cell energy system; b) a photovoltaic energy system; c) a solar-thermal energy system; d) a wind energy system; e) a CHP (combined heat and power) energy system; f) a microturbine energy system; g) a miniturbine energy system; h) a Stirling cycle energy system; i) a battery cell energy system; j) a clean fuel energy system; k) an electricity storage system; l) a biomass energy system; or m) a thermoelectric energy system.)

For the purposes of determining a property's taxable value under the Act and the Michigan Constitution, for taxes levied after 1994, "additions" means, among other things, new construction. "New construction" means property not in existence on the immediately preceding tax day and not replacement construction. The term includes the physical addition of equipment or furnishings, subject to the list of repairs considered normal maintenance described above. The bill would include the installation, replacement, or repair of an alternative energy system among the normal maintenance activities that would be excluded from the definitions of "additions" and "new construction" for the purposes of determining a property's taxable value.

#### **Senate Bill 48**

The General Property Tax Act exempts alternative energy personal property from the collection of taxes under the Act. The exemption applies to taxes levied after December 31, 2002, and before January 1, 2013.

"Alternative energy personal property" means all of the following:

- An alternative energy system.
- An alternative energy vehicle.
- All personal property of an alternative energy technology business.
- The personal property of a business that is not an alternative energy technology business that is used solely for the purpose of researching, developing, or manufacturing an alternative energy technology.

Under the Act, if the Michigan Next Energy Authority certifies alternative energy personal property as eligible for the exemption as provided in the Michigan Next Energy Authority Act, the Authority must forward a copy of that certification to the secretary of the local school district, and the treasurer of the local tax collecting unit, in which the alternative energy personal property is located.

Within 60 days after receiving the certification, the school board for the local school district in which the alternative energy personal property is located may adopt a resolution not to exempt that alternative energy personal property from a tax levied in that local school district under Section 1212 of the Revised School Code (which allows the board of a school district to levy a tax on the taxable value of the real and personal property of the school district each year for the purpose of creating a sinking fund) or a tax levied to retire outstanding bonded indebtedness. If a resolution is not adopted, that alternative energy personal property is exempt from those taxes levied after December 31, 2002, and before January 1, 2013.

Within 60 days after receiving the certification of alternative energy personal property, the governing body of the local tax collecting unit in which the alternative energy personal property is located may adopt a resolution not to exempt it from the taxes collected in that local tax collecting unit, except for taxes collected under Sections 1211 and 1212 of the Code, a tax levied under the

Code to retire outstanding bonded indebtedness, or the tax levied by the State under the State Education Tax Act. If a resolution is not adopted, that alternative energy personal property is exempt from the taxes collected in that local tax collecting unit. (Section 1211 of the Code specifies the number of mills the board of a school district may levy for school operating purposes.)

The bill would delete these provisions.

Under the bill, alternative energy personal property would remain exempt from the collection of taxes under the General Property Tax Act. However, the exemption would apply to taxes levied on alternative energy personal property after December 31, 2002, and before January 1, 2013, and taxes levied on an alternative energy system after the bill's effective date, without regard to ownership of the alternative energy personal property, provided that all of the following conditions were met:

- The alternative energy personal property had a generating capacity of not more than 150 kilowatts and was used solely to offset all or a portion of the commercial or industrial energy usage of the person upon whose real property the alternative energy personal property was located.
- If installed after the bill's effective date, the alternative energy personal property had a true cash value that, when combined with the true cash value of all personal property exempt under Section 90 of the Act as eligible personal property of the person claiming the exemption or a related entity, equaled less than \$80,000.

MCL 211.27 & 211.34d (S.B. 47)  
211.9i (S.B. 48)

## **BACKGROUND**

### Tax Classification History

Previously, alternative energy personal property was exempt from property taxation after December 31, 2002, and before January 1, 2013. In 2013, a State Tax Commission memorandum stated that solar panels "are to be considered industrial personal property and are to be reported on Table B - Machinery and Equipment on the personal property statement", which made solar panels exempt from the six-mill State Education Tax as well as certain local school taxes. Moreover, changes to Michigan's tax structure in 2014 allowed those solar panels to be exempt from taxation under the small taxpayer exemption, provided 1) the combined true cash value of all industrial personal property and commercial personal property owned by, leased by, or in the possession of the owner or a related entity claiming the exemption is less than \$80,000 in the local tax collecting unit, and 2) the property is not leased to or used by a person that previously owned the property or a person that, directly or indirectly controls, is controlled by, or under common control with the person that previously owned the property.

In *Clevey v. City of Ann Arbor*, Michigan Tax Tribunal, Docket No. 17-003056 (2018), an Ann Arbor resident disagreed with the Ann Arbor assessor who determined that a solar photovoltaic generation system installed on the resident's residential property in 2016 was real property (which had the effect of increasing the residential property's taxable value). The resident argued that the solar photovoltaic generation system was residential personal property, which is exempt from property tax. In its Final Opinion and Judgment, the Michigan Tax Tribunal found that the photovoltaic panels at issue were fixtures to the real property. In its 2018 memorandum, the State Tax Commission rescinded its previous guidance, as it related to the treatment of residential solar panels, and adopted the rationale by the Michigan Tax Tribunal in the case described above, stating that "solar panels on a parcel classified as residential real property shall be assessed as a component of the real property".

## 2017-18 Legislative Session

Senate Bills 47 and 48 of the 2019-20 Legislative Session are reintroductions of House Bills 5143 and 5680 of the 2017-18 Legislative Session. House Bill 5143 passed the Michigan House of Representatives by a vote of 106-3, and the Michigan Senate by a vote of 38-0; House Bill 5680 passed the House of Representatives by a vote of 105-4, and the Senate by a vote of 38-0. However, on December 28, 2018, Governor Rick Synder vetoed the bills and included the following veto message:

Today I vetoed House Bill 5143 and House Bill 5680. Both bills would have amended the General Property Tax Act in regard to the exemption of alternative energy personal property. Specifically, Enrolled House Bill 5143 would have eliminated the existing certification and exemption-approval process for alternative energy personal property that is conducted by the Michigan Next Energy Authority and local units.

Unfortunately, the bill presented several technical issues that it failed to resolve. For example, the bill would have afforded differential treatment of alternative energy personal property installed before the bill's effective date versus such property installed after that date. Furthermore, the bill would have imposed an \$80,000 true cash value limit for such property installed after the bill's effective date, but was ambiguous concerning the relevant governmental jurisdiction within which the \$80,000 limit would have applied.

Enrolled House Bill 5680 was more straightforward and acceptable. It essentially would have added the installation of alternative energy personal property to the definition of normal maintenance, which now includes replacing or repairing such property. However, House Bill 5680 is tie-barred to House Bill 5143. Because I have vetoed House Bill 5143, House Bill 5680 will not take effect and therefore I am also returning it to you without approval.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Michigan's alternative and renewable energy industry is an important component of the State's economy. According to Clean Jobs Midwest, Michigan leads the Midwest in clean energy jobs with 126,081 (or 2.7% of Michigan's workforce), which ranks fifth overall in the nation. Of those jobs, the organization's website reports that 11,427 concern renewable energy generation (such as solar and wind). Furthermore, Michigan companies that hire clean energy workers anticipate a 9.0% growth rate in 2019.

The State should adopt policies that encourage and enhance the expansion of the alternative and renewable energy industry. If a Michigan resident wishes to invest in an alternative energy system, be it for environmental reasons, energy independence, or financial savings, he or she should not be discouraged from doing so because of the fear of increasing his or her residential property's taxable value. Alternative energy systems often are expensive to install, and the additional expense of higher property taxes increases this financial burden. The bills would encourage the adoption of alternative energy systems and would provide consumers options to address their energy needs and preferences.

Moreover, it is important to have consistency when the State's tax policy is applied in different jurisdictions. According to testimony provided before the Senate Committee on Finance, however, alternative energy systems are classified inconsistently throughout Michigan municipalities for

taxation purposes. The bills would ensure that solar panels and other alternative energy systems are classified in the same manner by assessors across Michigan.

### **Opposing Argument**

Senate Bill 48 is unchanged from House Bill 5143 of the 2017-18 Legislative Session, so the concerns described in Governor Snyder's veto message (see **BACKGROUND**) remain.

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

The bills would reduce State and local property tax revenue, and increase School Aid Fund expenditures, by an unknown amount that would depend on the value of the affected property, local millage rates, and the number of parcels affected.

Under current legal interpretations, most solar energy/solar panels are already exempt from the State Education Tax and the 18 mills levied on nonhomestead property for local school operating purposes. As a result, for solar-related property, the bills would have no effect on State revenue or expense, although the bills would reduce local unit revenue. For alternative energy property other than solar-related property, the bills would reduce both State and local revenue, and increase School Aid Fund expenditures, if per pupil allowances were to be maintained.

The bills do present several technical issues, including some that affect the magnitude of any revenue loss. For example, Senate Bill 48 Section 2(B)(ii) would apply only to property installed after the bill's effective date. As a result, the bill would fully exempt affected property installed before the bill's effective date but would subject property installed after the bill's effective date to a limit of \$80,000 in true cash value. Additionally, unlike the limit imposed by Section 9o (to which the bill refers), the bill does not appear to define the relevant jurisdiction for the \$80,000 limit. As a result, it is unclear if the \$80,000 limit would apply on a taxing unit basis (as in section 9o), or if it would apply on a statewide basis, or taxpayer basis, or some other jurisdictional level. Furthermore, the bill would permit a taxpayer that was not claiming the exemption under 9o to claim an \$80,000 exemption for affected property, even if the reason the taxpayer was not claiming the exemption was because the other personal property owned by the taxpayer exceeded \$80,000 in true cash value.

In Senate Bill 47, the bill would add "installing" alternative energy property as part of the definition of "normal maintenance", in addition to replacing or repairing such property. However, the section would permit normal maintenance to be exempted from consideration only if it were "not part of a structural addition". Assessors are likely to differ in their interpretations as to whether or not installing new alternative energy property constitutes a "part of a structural addition", especially when no alternative energy equipment or system has previously been affixed to the property.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.