

SENATE BILL NO. 1032

July 23, 2020, Introduced by Senators IRWIN, ALEXANDER, BULLOCK, WOJNO, BAYER and GEISS and referred to the Committee on Energy and Technology.

A bill to amend 2010 PA 270, entitled
"Property assessed clean energy act,"
(MCL 460.931 to 460.949) by amending the title, by designating
section 1 as part 1 and sections 3 to 19 as part 2, and by adding
part 3.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to authorize local units of government to adopt

property ~~assessed clean energy~~ **assessment** programs and to create districts to promote the use of renewable energy systems, ~~and~~ energy efficiency improvements, **water usage improvements, air quality improvements, and environmental hazard projects** by owners of certain real property; to provide for the financing of such 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, ~~and~~ energy efficiency improvements, **air quality 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.

PART 1

GENERAL PROVISIONS

PART 2

COMMERCIAL AND INDUSTRIAL PROPERTY

PART 3

NONCOMMERCIAL, NONINDUSTRIAL PROPERTY

Sec. 20. As used in this part:

(a) "Anaerobic digester" means a device for optimizing the anaerobic digestion of biomass for the purpose of recovering biofuel for energy production.

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

(c) "District" means a district created under a property

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

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

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

11 (ii) Storm windows and doors; multi-glazed windows and doors;
12 heat-absorbing or heat-reflective glazed and coated window and door
13 systems; and additional glazing, reductions in glass area, and
14 other window and door system modifications that reduce energy
15 consumption.

16 (iii) Automated energy control systems.

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

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

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

22 (vii) Energy recovery systems.

23 (viii) Day lighting systems.

24 (ix) Installation or upgrade of electrical wiring or outlets to
25 charge a motor vehicle that is fully or partially powered by
26 electricity.

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

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

4 (e) "Energy project" means the installation or modification of
5 an energy efficiency improvement or the acquisition, installation,
6 or improvement of a renewable energy system or anaerobic digester
7 energy system.

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

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

13 (ii) Mitigate the effects of floods or drought.

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

16 (iv) Mitigate lead paint contamination in housing built before
17 1978.

18 (v) Reduce emissions to outdoor or indoor air or control
19 indoor humidity.

20 (g) "Governing body" means any of the following:

21 (i) The county board of commissioners of a county.

22 (ii) The township board of a township.

23 (iii) The council or other similar elected legislative body of a
24 city or village.

25 (iv) The governing body of a separate legal entity created
26 pursuant to section 7 of the urban cooperation act of 1967, 1967
27 (Ex Sess) PA 7, MCL 124.507.

28 (h) "Local unit of government" means a county, township, city,

1 village, or a separate legal entity created pursuant to section 7
2 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL
3 124.507.

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

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

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

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

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

18 (l) "Property" means privately owned noncommercial,
19 nonindustrial real property located within the local unit of
20 government. However, property does not include multifamily
21 residential property with 5 or more dwelling units.

22 (m) "Property assessed clean energy program" or "program"
23 means a program as described in section 21(2).

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

27 (o) "Renewable energy resource" means a resource that
28 naturally replenishes over a human, not a geological, time frame,
29 that is ultimately derived from solar power, water power, or wind

1 power. Renewable energy resource does not include petroleum,
2 nuclear, natural gas, or coal. A renewable energy resource comes
3 from the sun or from thermal inertia of the earth and minimizes the
4 output of toxic material in the conversion of the energy and
5 includes, but is not limited to, all of the following:

6 (i) Biomass.

7 (ii) Solar and solar thermal energy.

8 (iii) Wind energy.

9 (iv) Geothermal energy.

10 (v) Methane gas captured from a landfill.

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

17 Sec. 21. (1) Pursuant to section 22, a local unit of
18 government may establish a property assessed clean energy program
19 and may, from time to time, create a district or districts under
20 the program.

21 (2) Under a property assessed clean energy program, the local
22 unit of government may enter into a contract with the record owner
23 of property within a district to finance or refinance 1 or more
24 projects on the property. The contract may provide for the
25 repayment of the cost of a project through assessments on the
26 property benefited. The financing or refinancing may include the
27 cost of materials and labor necessary for installation and of
28 permit fees, inspection fees, application and administrative fees,
29 bank fees, application, administration, and other program fees, and

1 all other fees that may be incurred by the record owner pursuant to
2 the installation on a specific or pro rata basis, as determined by
3 the local unit of government.

4 Sec. 22. (1) To establish a property assessed clean energy
5 program, a governing body shall take the following actions in the
6 following order:

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

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

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

14 (iii) A description of the proposed arrangements for financing
15 the property assessed clean energy program.

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

17 (v) Reference to a report on the proposed property assessed
18 clean energy program as described in section 23(1) and a location
19 where the report is available pursuant to section 23(2).

20 (vi) The time and place for a public hearing on the proposed
21 property assessed clean energy program.

22 (b) Hold a public hearing at which the public may comment on
23 the proposed property assessed clean energy program, including the
24 report required by subdivision (a) (v).

25 (c) Adopt a resolution establishing the property assessed
26 clean energy program and setting forth its terms and conditions,
27 including all of the following:

28 (i) Matters required by section 23 to be included in the
29 report. For this purpose, the resolution may incorporate the report

1 or an amended version of the report by reference.

2 (ii) A description of aspects of the property assessed clean
3 energy program that may be amended without holding a new public
4 hearing and aspects that may be amended only after a new public
5 hearing is held.

6 (2) A property assessed clean energy program may be amended by
7 resolution of the governing body. Adoption of the resolution shall
8 be preceded by a public hearing if required pursuant to subsection
9 (1) (c) .

10 Sec. 23. (1) The report on the proposed property assessed
11 clean energy program required under section 22 shall include all of
12 the following:

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

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

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

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

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

25 (f) An explanation of how assessments will be made and
26 collected consistent with section 25(2) .

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

29 (i) The sale of bonds or notes, subject to the revised

1 municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

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

4 (iii) Owner-arranged financing from a commercial lender. Under
5 owner-arranged financing, the local unit of government may impose
6 an assessment pursuant to section 24 and forward payments to the
7 commercial lender or the record owner may pay the commercial lender
8 directly.

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

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

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

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

19 (j) A requirement that the total amount of the assessments
20 under the program will not exceed 20% of the current value of the
21 property.

22 (k) A requirement that the total amount of the assessments
23 under the program, plus all existing mortgage debt on the property,
24 will not exceed the current value of the property.

25 (l) Provisions for marketing and participant education.

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

27 (n) Quality assurance and antifraud measures.

28 (o) For an energy project financed with more than \$250,000.00
29 in assessments, both of the following:

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

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

8 (p) All of the following requirements, as applicable, for a
9 new construction energy project:

10 (i) The building or other structure shall meet or exceed
11 applicable Michigan uniform energy code requirements.

12 (ii) The energy project shall exceed, by an appropriate
13 standard, the applicable requirements of the state construction
14 code or the Michigan Administrative Code.

15 (q) The contract and financing for the project shall comply
16 with applicable state and federal consumer financial protection
17 laws and regulations.

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

23 Sec. 24. (1) A local unit of government may impose an
24 assessment under a property assessed clean energy program only
25 pursuant to a written contract under section 21(2) with the record
26 owner of the property to be assessed.

27 (2) Before entering into a contract with the record owner
28 under section 21(2), the local unit of government, using
29 commercially reasonable means, must verify that all of the

1 following apply:

2 (a) None of the following are delinquent with respect to the
3 property:

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

5 (ii) An assessment for another project under a property
6 assessed clean energy program.

7 (iii) A mortgage payment.

8 (b) The property is not subject to a reverse mortgage.

9 (c) The record owner is not a party to a current bankruptcy
10 proceeding.

11 (d) The requirements of section 23(1)(j) and (k) will be met.

12 (3) Before a local unit of government enters into a contract
13 with the record owner under section 21(2), all of the following
14 requirements must be met:

15 (a) The local unit of government must deliver to the record
16 owner a written financing estimate that discloses the project term,
17 project cost, interest rate, annual percentage rate, fees as
18 described in section 23(1)(h)(ii), other costs, and the projected
19 annual payment on the assessment.

20 (b) The record owner must acknowledge in writing that the
21 record owner has read and understands the financing estimate.

22 (c) The local unit of government must conduct a live, recorded
23 telephone call with the record owner to help ensure that the record
24 owner understands the financing estimate.

25 (4) All of the following apply to a contract under section
26 21(2):

27 (a) The term shall not exceed the useful life of the project,
28 as determined by credible, third-party sources.

29 (b) The interest rate shall be fixed and non-variable.

1 (c) Payments shall be fully amortizing.

2 (d) The annual percentage rate shall be calculated using
3 generally accepted practices within the United States consumer
4 financial services industry.

5 (5) Final payment shall not be issued to the contractor for a
6 project under a program, unless both of the following requirements
7 have been met:

8 (a) The record owner of the property certifies in writing that
9 the project has been completed to the satisfaction of the record
10 owner.

11 (b) The contractor certifies in writing both of the following:

12 (i) That the project meets the qualifying requirements of this
13 act and meets standards established by the United States Department
14 of Energy, the Environmental Protection Agency, other federal and
15 state agencies, or reputable third parties.

16 (ii) That final permits or inspections required by law have
17 been or will be obtained.

18 Sec. 25. (1) An assessment imposed under a property assessed
19 clean energy program, including any interest on the assessment and
20 any penalty, constitute a lien against the property on which the
21 assessment is imposed until the assessment, including any interest
22 or penalty, is paid in full. The lien runs with the property and
23 has the same priority and status as other property tax and
24 assessment liens. The local unit of government has all rights in
25 the case of delinquency in the payment of an assessment as it does
26 with respect to delinquent property taxes. When the assessment,
27 including any interest and penalty, is paid, the lien shall be
28 removed from the property.

29 (2) Installments of assessments due under a property assessed

1 clean energy program shall be included in each summer and winter
2 tax bill issued under the general property tax act, 1893 PA 206,
3 MCL 211.1 to 211.155, and shall be collected at the same time and
4 in the same manner as taxes collected under that act.

5 Alternatively, installments may be billed and collected as provided
6 in a special assessment ordinance of general applicability adopted
7 by the local unit of government pursuant to state law or local
8 charter.

9 Sec. 26. (1) A local unit of government may issue bonds or
10 notes to finance projects under a property assessed clean energy
11 program.

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

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

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

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

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

28 (e) Any other amounts lawfully available for that purpose.

29 (3) A pledge of assessments, funds, or contractual rights made

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

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

13 (5) Bonds or notes issued under this part are subject to the
14 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
15 141.2821.

16 (6) Bonds or notes issued under this part, and interest
17 payable on such bonds and notes, are exempt from all taxation by
18 this state and its political subdivisions.

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

25 Sec. 27. A commercial or industrial electric customer that
26 installs or modifies an electric energy efficiency improvement
27 under a property assessed clean energy program is exempt from the
28 energy optimization charges the customer would otherwise incur
29 under section 89 or 91 of the clean and renewable energy and energy

1 waste reduction act, 2008 PA 295, MCL 460.1089 and 460.1091, if the
2 customer conducts a self-directed energy waste reduction plan under
3 and subject to the applicable requirements of section 93 of the
4 clean and renewable energy and energy waste reduction act, 2008 PA
5 295, MCL 460.1093. These requirements include, but are not limited
6 to, the requirement that the plan provide for aggregate energy
7 savings that each year meet or exceed the energy waste reduction
8 standards based on the electricity purchases in the previous year
9 for the site or sites covered by the self-directed plan.

10 Sec. 28. (1) A local unit of government may join with any
11 other local unit of government, or with any person, or with any
12 number or combination thereof, by contract or otherwise as may be
13 permitted by law, for the implementation of a property assessed
14 clean energy program, in whole or in part.

15 (2) If a property assessed clean energy program is implemented
16 jointly by 2 or more local units of government pursuant to
17 subsection (1), a single public hearing held jointly by the
18 cooperating local units of government is sufficient to satisfy the
19 requirements of section 22(1)(b).