



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 47 (as enacted)
House Bill 4069 (as enacted)
House Bill 4465 (as enacted)
Sponsor: Senator Tom Barrett (S.B. 47)
Representative Bronna Kahle (H.B. 4069)
Representative Yousef Rabhi (H.B. 4465)
Senate Committee: Finance
House Committee: Tax Policy
Ways and Means

PUBLIC ACT 116 of 2019
PUBLIC ACT 117 of 2019
PUBLIC ACT 118 of 2019

Date Completed: 1-7-21

CONTENT

Senate Bill 47 amended 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 is considered normal maintenance if it is not a part of a structural addition or completion for the purposes of determining a property's taxable value.

House Bill 4069 amended the General Property Tax Act to modify references to accommodate the changes proposed in Senate Bill 47.

House Bill 4465 amended 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 meets certain conditions.

The bills took effect November 15, 2019.

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 includes 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 does not exceed the annual energy consumption measured by the utility-provided electrical meter on the system to which it is connected.

"Alternative energy system" means 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.)

House Bill 4069

Under the General Property Tax Act, 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 includes the installation, replacement, or repair of an alternative energy system among the normal maintenance activities that must be excluded from the definitions of "additions" and "new construction" for the purposes of determining a property's taxable value.

House Bill 4465

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.

Formerly, under the Act, if the Michigan Next Energy Authority certified alternative energy personal property as eligible for the exemption as provided in the Michigan Next Energy Authority Act, the Authority had to 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 was located. The Act also prescribed processes by which a school board for a local school district or the governing body of a local tax collecting unit could opt out of the exemption. The bill deleted these provisions.

Under the bill, alternative energy personal property remains exempt from the collection of taxes under the General Property Tax Act. However, the exemption applies 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 are met:

- The alternative energy personal property has a generating capacity of not more than 150 kilowatts and is 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 is located.

-- If installed after the bill's effective date, the alternative energy personal property has a true cash value that, when combined with the true cash value of all personal property exempt under Section 9o of the Act as eligible personal property of the person claiming the exemption or a related entity, equals less than \$80,000.

MCL 211.27 (S.B. 47)
211.34d (H.B. 4069)
211.9i (H.B. 4465)

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

The bills 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 Snyder 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.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

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

Under legal interpretations, most solar energy/solar panels are 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 will have no effect on State revenue or expense, although the bills will reduce local unit revenue. For alternative energy property other than solar-related property, the bills will reduce both State and local revenue, and increase School Aid Fund expenditures, if per pupil allowances are maintained.

The bills do present several technical issues, including some that affect the magnitude of any revenue loss. For example, House Bill 4465 Section 2(B)(ii) applies only to property installed after the bill's effective date. As a result, the bill fully exempts affected property installed before the bill's effective date but subjects 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 applies on a taxing unit basis (as in section 9o), or if it applies on a statewide basis, or taxpayer basis, or some other jurisdictional level. Furthermore, the bill permits a taxpayer that is not claiming the exemption under 9o to claim an \$80,000 exemption for affected property, even if the reason the taxpayer is not claiming the exemption was because the other personal property owned by the taxpayer exceeds \$80,000 in true cash value.

Similarly, Senate Bill 47 adds "installing" alternative energy property as part of the definition of "normal maintenance", in addition to replacing or repairing such property. However, the bill permits normal maintenance to be exempted from consideration only if it is "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

SAS\S1920\s47es

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.