

SENATE BILL NO. 1030

July 23, 2020, Introduced by Senators IRWIN, ALEXANDER, WOJNO, BULLOCK, 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," by amending the title and sections 1, 3, 5, 7, 9, 11, 13, 15, 17, and 19 (MCL 460.931, 460.933, 460.935, 460.937, 460.939, 460.941, 460.943, 460.945, 460.947, and 460.949), sections 3 and 9 as amended by 2017 PA 242, and by designating section 1 as part 1 and sections 3 to 19 as part 2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to authorize local units of government to adopt
 3 property ~~assessed clean energy~~ **assessment** programs and to create
 4 districts to promote ~~the use of renewable~~ energy systems, and
 5 energy efficiency improvements, **water usage improvements, and**
 6 **environmental hazard projects** by owners of certain real property;
 7 to provide for the financing of such programs through voluntary
 8 property assessments, commercial lending, and other means; to
 9 authorize a local unit of government to issue bonds, notes, and
 10 other evidences of indebtedness and to pay the cost of renewable
 11 energy systems, ~~and~~ energy efficiency improvements, **and**
 12 **environmental hazard projects** from the proceeds thereof; to provide
 13 for the repayment of bonds, notes, and other evidences of
 14 indebtedness; to authorize certain fees; to prescribe the powers
 15 and duties of certain governmental officers and entities; and to
 16 provide for remedies.

17 PART 1.

18 GENERAL PROVISIONS

19 Sec. 1. This act shall be known ~~and~~ may be cited ~~as~~ the
 20 "property assessed clean energy act".

21 PART 2.

22 COMMERCIAL AND INDUSTRIAL PROPERTY

23 Sec. 3. As used in this ~~act~~:**part**:

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

27 (b) "Anaerobic digester energy system" means an anaerobic
 28 digester and the devices used to generate electricity or heat from
 29 biogas produced by the anaerobic digester or to store the biogas

1 for the future generation of electricity or heat.

2 (c) "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.

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

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

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

18 (iii) Automated energy control systems.

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

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

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

24 (vii) Energy recovery systems.

25 (viii) Day lighting systems.

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

1 (x) Measures to reduce the usage of water or increase the
2 efficiency of water usage.

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

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

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

13 (i) Mitigate lead, heavy metal, or PFAS contamination in
14 potable water systems.

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

16 (iii) Increase the resistance of property against severe
17 weather.

18 (iv) Mitigate lead paint contamination in housing built before
19 1978.

20 (g) ~~(f)~~ "Governing body" means the county board of
21 commissioners of a county, the township board of a township, or the
22 council or other similar elected legislative body of a city or
23 village.

24 (h) ~~(g)~~ "Local unit of government" means a county, township,
25 city, or village.

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

28 (i) It occurs at a newly constructed building or other
29 structure.

1 **(ii) It consists of significant modifications to an existing**
 2 **building or other structure.**

3 **(j) ~~(h)~~**—"Person" means an individual, firm, partnership,
 4 association, corporation, unincorporated joint venture, or trust,
 5 organized, permitted, or existing under the laws of this state or
 6 any other state, including a federal corporation, or a combination
 7 thereof. However, person does not include a local unit of
 8 government.

9 **(k) "Project" means an environmental hazard project or energy**
 10 **project.**

11 **(l) ~~(i)~~**—"Property" means **any of the following** privately owned
 12 ~~commercial or industrial~~ real property located within the local
 13 unit of government: -

14 **(i) Commercial property.**

15 **(ii) Industrial property.**

16 **(iii) Multifamily residential property with 4 or more dwelling**
 17 **units.**

18 **(m) ~~(j)~~**—"Property assessed clean energy program" or "program"
 19 means a program as described in section 5(2).

20 **(n) ~~(k)~~**—"Record owner" means the person or persons possessed
 21 of the most recent fee title or land contract vendee's interest in
 22 property as shown by the records of the county register of deeds.

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

1 includes, but is not limited to, all of the following:

2 (i) Biomass.

3 (ii) Solar and solar thermal energy.

4 (iii) Wind energy.

5 (iv) Geothermal energy.

6 (v) Methane gas captured from a landfill.

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

13 Sec. 5. (1) Pursuant to the procedures provided in section 7,
14 a local unit of government may establish a property assessed clean
15 energy program and may, from time to time, create a district or
16 districts under the program.

17 (2) Under a **property assessed clean energy** program, the local
18 unit of government may enter into a contract with the record owner
19 of property within a district to finance or refinance 1 or more
20 ~~energy~~ projects on the property. The contract may provide for the
21 repayment of the cost of ~~an energy~~ a project through assessments
22 ~~upon~~ on the property benefited. The financing or refinancing may
23 include the cost of materials and labor necessary for installation
24 ~~, and of~~ permit fees, inspection fees, application and
25 administrative fees, bank fees, and all other fees that may be
26 incurred by the record owner pursuant to the installation on a
27 specific or pro rata basis, as determined by the local unit of
28 government.

29 Sec. 7. (1) To establish a property assessed clean energy

1 program, the governing body of a local unit of government shall
2 take the following actions in the following order:

3 (a) Adopt a resolution of intent that includes all of the
4 following:

5 (i) A finding that the financing of ~~energy~~ projects is a valid
6 public purpose.

7 (ii) A statement of intent to provide funds for ~~energy~~
8 projects, which may be repaid by assessments on the property
9 benefited, with the agreement of the record owners.

10 (iii) A description of the proposed arrangements for financing
11 the **property assessed clean energy** program.

12 (iv) The types of ~~energy~~ projects that may be financed.

13 (v) Reference to a report on the proposed **property assessed**
14 **clean energy** program as described in section 9(1) and a location
15 where the report is available pursuant to section 9(2).

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

18 (b) Hold a public hearing at which the public may comment on
19 the proposed **property assessed clean energy** program, including the
20 report required by ~~section 9~~. **subdivision (a) (v)**.

21 (c) Adopt a resolution establishing the **property assessed**
22 **clean energy** program and setting forth its terms and conditions,
23 including all of the following:

24 (i) Matters required by section 9 to be included in the report.
25 For this purpose, the resolution may incorporate the report or an
26 amended version ~~thereof~~ **of the report** by reference.

27 (ii) A description of ~~which~~ aspects of the **property assessed**
28 **clean energy** program **that** may be amended without a new public

1 hearing and ~~which~~ aspects **that** may be amended only after a new
2 public hearing is held.

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

7 Sec. 9. (1) The report on the proposed **property assessed clean**
8 **energy** program required under section 7 shall include all of the
9 following:

10 (a) A form of contract between the local unit of government
11 and **the** record owner governing the terms and conditions of
12 financing and assessment under the **property assessed clean energy**
13 program.

14 (b) Identification of an official authorized to enter into a
15 **property assessed clean energy** program contract on behalf of the
16 local unit of government.

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

20 (d) An application process and eligibility requirements for
21 financing ~~energy~~ projects under the **property assessed clean energy**
22 program.

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

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

28 (g) A plan for raising capital to finance improvements under
29 the **property assessed clean energy** program. The plan may include

1 any of the following:

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

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

6 (iii) Owner-arranged financing from a commercial lender. Under
7 owner-arranged financing, the local unit of government may impose
8 an assessment pursuant to section 11 and forward payments to the
9 commercial lender or the record owner may pay the commercial lender
10 directly.

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

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

15 (ii) Any application, administration, or other **property**
16 **assessed clean energy** program fees to be charged to record owners
17 participating in the program that will be used to finance costs
18 incurred by the local unit of government as a result of the
19 program.

20 (i) A requirement that the term of an assessment not exceed
21 the useful life of the ~~energy~~-project paid for by the assessment.

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

24 (k) A requirement that the record owner of property subject to
25 a mortgage obtain written consent from the mortgage holder before
26 participating in the program.

27 (l) Provisions for marketing and participant education.

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

29 (n) Quality assurance and antifraud measures.

1 (o) A requirement that a baseline energy audit **or baseline**
 2 **energy modeling** be conducted before an energy project is
 3 undertaken, to establish future energy savings. After the energy
 4 project is completed, the local unit of government shall obtain
 5 verification that the renewable energy system, anaerobic digester
 6 energy system, or energy efficiency improvement was properly
 7 installed and is operating as intended.

8 (p) For an energy project financed with more than \$250,000.00
 9 in assessments, both of the following:

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

12 (ii) A requirement that, ~~in the contract for installation of~~
 13 ~~the energy project,~~ **unless waived by the record owner,** the
 14 contractor guarantee to the record owner that the energy project
 15 will achieve a savings-to-investment ratio greater than 1 and agree
 16 to pay the record owner, on an annual basis, any shortfall in
 17 savings below this level. **This subparagraph does not apply to a new**
 18 **construction energy project.**

19 (q) **For a new construction energy project, a requirement that**
 20 **the building or other structure meet or exceed applicable Michigan**
 21 **uniform energy code requirements.**

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

27 Sec. 11. (1) A local unit of government may impose an
 28 assessment under a property assessed clean energy program only
 29 pursuant to a written contract with the record owner of the

1 property to be assessed.

2 (2) Before entering into a contract with ~~a~~**the** record owner
3 under a **property assessed clean energy** program, the local unit of
4 government shall verify all of the following:

5 (a) That there are no delinquent taxes, special assessments,
6 or water or sewer charges on the property.

7 (b) That there are no delinquent assessments on the property
8 under a property assessed clean energy program.

9 Sec. 13. (1) An assessment imposed under a property assessed
10 clean energy program, including any interest on the assessment and
11 any penalty, constitute a lien against the property on which the
12 assessment is imposed until the assessment, including any interest
13 or penalty, is paid in full. The lien runs with the property and
14 has the same priority and status as other property tax and
15 assessment liens. The local unit of government has all rights in
16 the case of delinquency in the payment of an assessment as it does
17 with respect to delinquent property taxes. When the assessment,
18 including any interest and penalty, is paid, the lien shall be
19 removed from the property.

20 (2) Installments of assessments due under a **property assessed**
21 **clean energy** program shall be included in each summer and winter
22 tax bill issued under the general property tax act, 1893 PA 206,
23 MCL 211.1 to 211.155, and shall be collected at the same time and
24 in the same manner as taxes collected under ~~the general property~~
25 ~~tax act, 1893 PA 206, MCL 211.1 to 211.155.~~ **that act.**

26 Alternatively, installments may be billed and collected as provided
27 in a special assessment ordinance of general applicability adopted
28 by the local unit of government pursuant to state law or local
29 charter.

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

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

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

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

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

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

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

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

29 (4) Bonds or notes of 1 series issued under this ~~act-part~~ may

1 be secured on a parity with bonds or notes of another series issued
 2 by the local unit of government pursuant to the terms of a master
 3 indenture or master resolution entered into or adopted by the
 4 governing body of the local unit of government.

5 (5) Bonds or notes issued under this ~~act~~**part** are subject to
 6 the revised municipal finance act, 2001 PA 34, MCL 141.2101 to
 7 141.2821.

8 (6) Bonds or notes issued under this ~~act~~**part**, and interest
 9 payable on such bonds and notes, are exempt from all taxation by
 10 this state and its political subdivisions.

11 (7) Bonds or notes issued under this ~~act~~**part** further
 12 essential public and governmental purposes, including, but not
 13 limited to, reduced energy costs, reduced greenhouse gas emissions,
 14 **improved public health, protection against climate hazards and**
 15 **other environmental hazards**, economic stimulation and development,
 16 improved property valuation, and increased employment.

17 Sec. 17. A commercial or industrial electric customer that
 18 installs or modifies an electric energy efficiency improvement
 19 under a property assessed clean energy program is exempt from the
 20 energy optimization charges the customer would otherwise incur
 21 under section 89 or 91 of the clean ~~and~~ renewable ~~energy~~ and
 22 ~~efficient-energy~~ **waste reduction** act, 2008 PA 295, MCL 460.1089 and
 23 460.1091, if the customer conducts a self-directed energy
 24 ~~optimization~~**waste reduction** plan under and subject to the
 25 applicable requirements of section 93 of the clean ~~and~~ renewable
 26 ~~energy~~ and ~~efficient-energy~~ **waste reduction** act, 2008 PA 295, MCL
 27 460.1093. These requirements include, but are not limited to, the
 28 requirement that the plan provide for aggregate energy savings that
 29 each year meet or exceed the energy ~~optimization~~**waste reduction**

1 standards based on the electricity purchases in the previous year
2 for the site or sites covered by the self-directed plan.

3 Sec. 19. (1) A local unit of government may join with any
4 other local unit of government, or with any person, or with any
5 number or combination thereof, by contract or otherwise as may be
6 permitted by law, for the implementation of a property assessed
7 clean energy program, in whole or in part.

8 (2) If a property assessed clean energy program is implemented
9 jointly by 2 or more local units of government pursuant to
10 subsection (1), a single public hearing held jointly by the
11 cooperating local units of government is sufficient to satisfy the
12 requirements of section 7(1)(b).