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House Bill 5397 (Substitute H-2 as passed by the House)  
Sponsor: Representative Joe Haveman  
House Committee: Energy and Technology  
Senate Committee: Energy and Technology

Date Completed: 9-16-14

### **CONTENT**

**The bill would create the "Municipal Utility Residential Clean Energy Program Act" to authorize a municipality (a city, village, or township with residents served by a municipal electric utility) to establish a clean energy program to promote the use of renewable energy systems and energy efficiency improvements by residential property owners. Specifically, the bill would do the following:**

- **Authorize a municipality to designate a residential clean energy program district and enter into a contract with the owner of residential property in the district to finance energy projects on the property.**
- **Prescribe procedures that a municipality's governing body would have to follow to adopt a residential clean energy program by resolution or ordinance.**
- **Allow an adopted program to provide for financing energy projects through loans made to property owners by the municipal electric utility, a nonprofit corporation administering a program, or commercial lenders.**
- **Authorize the program to collect program fees and installment payments from participating residential property owners through a per-meter charge on their electric bills.**
- **Allow loan repayment and program fee delinquency to be treated in the same manner as tax delinquency.**
- **Require a municipality's governing body to issue a report on a proposed residential clean energy program, and prescribe the information that would have to be included in the report.**

#### Residential Clean Energy Program

A municipality could establish a residential clean energy program and, from time to time, designate a district or districts within its territorial jurisdiction where residents were served by a municipal electric utility. Districts could be separate, overlapping, or coterminous.

Under a residential clean energy program, the municipality could enter into a contract with a record owner of privately owned residential real property within a district to finance or refinance one or more energy projects on the property. The financing or refinancing could include the cost of materials and labor necessary for installation, home energy audit costs, permit fees, inspection fees, application and administrative fees, bank fees, and all other fees that the owner could incur for the installation on a specific or pro rata basis, as determined by the municipality.

"Energy project" would mean the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system. "Energy efficiency improvement" would mean equipment, devices, or materials intended to decrease energy consumption, including all of the following:

- Insulation in walls, roofs, floors, foundations, or heating and cooling distribution systems.
- Storm windows and doors; multi-glazed windows and doors; heat-absorbing or heat-reflective glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.
- Automated energy control systems.
- Heating, ventilating, or air-conditioning and distribution system modifications or replacements.
- Air sealing, caulking, and weather-stripping.
- Lighting fixtures that reduce the energy use of the lighting system.
- Energy recovery systems.
- Electrical wiring or outlets to charge a motor vehicle that is fully or partially powered by electricity.
- Measures to reduce water use or increase water use efficiency
- Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body.

"Renewable energy system" would mean a fixture, product, device, or interacting group of fixtures, products, or devices on the customer's side of the meter that uses one or more renewable energy resources. The term would include a biomass stove, but not an incinerator or digester.

"Renewable energy resource" would mean a resource that naturally replenishes over a human, not a geological, time frame and that ultimately is derived from solar, water, or wind power. The term would not include petroleum, nuclear, natural gas, or coal. The bill specifies that a renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy. The term would include all of the following:

- Biomass.
- Solar and solar thermal energy.
- Wind energy.
- Geothermal energy.
- Methane gas captured from a landfill.

#### Procedures for Program Establishment

To establish a residential clean energy program, the governing body of a municipality would have to take certain actions in a prescribed order. First, the governing body would have to adopt a resolution of intent that included all of the following:

- A finding that the financing of energy projects was a valid public purpose.
- A statement of intent to provide funds for financing energy projects, which could be repaid by charges on the electric utility bills of the properties benefitted, with the agreement of the record owners.
- A description of the proposed arrangements for financing the program.
- The types of energy projects that could be financed.
- References to a report (described below) on the proposed program and the internet address and office location where the report was available.
- The time and place for a public hearing on the proposed program.

Next, the governing body would have to hold a public hearing on the proposal. Finally, the governing body would have to adopt a resolution or ordinance establishing the program and setting forth its terms and conditions, including all of the following:

- Matters required to be included in the program report.
- If the program were established by a resolution, a description of which aspects of the program could be amended without a new public hearing and which aspects could be amended only after a new public hearing was held.

The resolution could incorporate the report or an amended version of it by reference.

A program established by resolution or ordinance could be amended by resolution of the governing body or ordinance, respectively. Before the governing body adopted an amendment by resolution, it would have to conduct a public hearing if required by the original resolution.

#### Program Administration & Loans to Property Owners

A residential clean energy program could be administered by a nonprofit corporation, including a nonprofit corporation formed under Section 40 of the Home Rule City Act. The nonprofit corporation's administration of the program could be funded by money appropriated by the municipality, transferred from the municipality's electric utility, if any, or provided by private sources. (Under Section 40 of the Home Rule City Act, the legislative body of a city may by ordinance or resolution authorize the formation of a nonprofit corporation under the Nonprofit Corporation Act. A nonprofit corporation may be organized under Section 40 only for purposes that are valid public purposes for cities in Michigan.)

A program could provide for financing energy projects through loans made to property owners by the municipal electric utility, by a nonprofit corporation administering a municipality's program, or by commercial lenders. Loans by commercial lenders could be facilitated by the nonprofit corporation.

If a nonprofit corporation made loans to property owners, interest would have to be charged on the unpaid balance at a rate of not more than the adjusted prime rate as determined under the revenue Act, plus 4%. A loan would have to be repaid in monthly installments. The lender would have to comply with all State and Federal laws applicable to the extension of credit for home improvements.

The program could provide for billing customers of the municipal electric utility any program fees (described below) charged to participating owners and the monthly installment payments as a per-meter charge on the bill for electric services. The payment would have to be considered part of the charges for electric services to the property for purposes of enforcement as provided under Section 21 of the Revenue Bond Act. (That section provides that charges for services furnished to a premises by a public improvement may be a lien on the premises. The charges must be collected and the lien must be enforced in the same manner as provided for the collection of taxes and the enforcement of a tax lien.) Electric service could be shut off for nonpayment of the per-meter charge in the same manner and pursuant to the same procedures as used to enforce nonpayment of other charges for electric service. If notice of a loan under the program were recorded with the applicable county register of deeds, the obligation to pay the per-meter charge would run with the land and be binding on future customers contracting for electric service to the property.

#### Report

The required report on a proposed residential clean energy program would have to include all of the following:

- A form of contract between the municipality and record owner governing the terms and conditions of financing under the program.
- Identification of an official authorized to enter into a program contract on behalf of the municipality.
- A maximum aggregate annual dollar amount for all financing to be provided by the municipality under the program.
- An application process and eligibility requirements for financing energy projects under the program, including the classes of eligible property.
- A method for determining interest rates on loan installments, repayment periods, and the maximum amount of the loan, subject to the requirements for loans by a nonprofit organization.
- An explanation of how monthly installment payments on loans would be billed and collected.
- A plan for raising capital to finance improvements under the program.

The plan for raising capital could include any of the following:

- The sale of bonds or notes, subject to the Revised Municipal Finance Act.
- Amounts to be advanced by the municipality through funds available to it from any other source.
- Owner-arranged financing from a commercial lender whether or not facilitated by a nonprofit corporation.

Under owner-arranged financing, a municipal electric utility could collect monthly installment payments on the electric utility bills and forward them to the commercial lender, or the record owner could pay the commercial lender directly.

Additionally, the report would have to include information regarding all of the following, to the extent known, or procedures to determine the following in the future:

- Any reserve fund or funds to be used as security for bonds or notes.
- Any application, administration, or other program fees to be charged to a record owner participating in the program.

The fees would have to be used to finance costs incurred by the municipality as a result of the owner's participation.

The report also would have to include the following:

- A requirement that the term for repayment of a loan to a property owner could not exceed the anticipated useful life of the energy project paid for by the loan or 180 months, whichever was less.
- Provisions for marketing and participant education.
- Provisions for adequate debt service reserve fund.
- Quality assurance and antifraud measures.
- A requirement that a baseline home energy audit be conducted before any energy project was undertaken.

After the project was completed, the municipality would have to obtain verification that the renewable energy system or energy efficiency improvement was installed properly and was operating as intended.

The municipality would have to post the report on its website, if any, and make it available for review at the office of the clerk or the official authorized to enter into contracts on behalf of the municipality under the program.

"Home energy audit" would mean an evaluation of the energy performance of a residential structure, by a qualified person using building-performance diagnostic equipment and complying with American National Standards Institute-approved home energy audit standards, that does both of the following:

- Determines how best to optimize energy performance while maintaining or improving human comfort, health, and safety and the durability of the structure.
- Includes a baseline energy model and cost-benefit analysis for recommended energy efficiency improvements.

"Person" would mean an individual, firm, partnership, association, corporation, unincorporated joint venture, or trust, organized, permitted, or existing under the laws of Michigan or any other state, including a Federal corporation, or any combination of those entities. The term would exclude a local unit of government.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would have no fiscal impact on State government. The fiscal impact on local government would be limited to a city, village, or township with a municipal electric utility that offered a residential clean energy program pursuant to the bill. The local impact would vary based on the structure and terms of a local program, which could include financial participation by the municipal electric utility, the municipality, or a private fund source. Participating municipalities would incur costs to administer and finance the program and to prepare and post on the internet a required report. Depending on the structure of the program, the costs would be offset by participant fees, participant repayments (or possibly liens on residential property that benefited from the program), and potentially the avoidance of other municipal utility operating costs, if the residential clean energy program reduced demand for electricity.

Fiscal Analyst: Elizabeth Pratt

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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.