

HOUSE BILL NO. 5357

October 05, 2021, Introduced by Rep. Huizenga and referred to the Committee on Energy.

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
3 property ~~assessed clean energy~~ **assessment** programs and to create

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

16 PART 1

17 GENERAL PROVISIONS

18 PART 2

19 COMMERCIAL AND INDUSTRIAL PROPERTY

20 PART 3

21 **NONCOMMERCIAL, NONINDUSTRIAL PROPERTY**

22 **Sec. 20. As used in this part:**

23 (a) "Administrator" means a person authorized by a local unit
 24 of government under section 28(1) to administer a property assessed
 25 clean energy program on behalf of and at the discretion of the
 26 local unit of government.

27 (b) "Anaerobic digester" means a facility that uses
 28 microorganisms to break down biodegradable material in the absence
 29 of oxygen, producing methane and an organic product.

1 (c) "Anaerobic digester energy system" means an anaerobic
2 digester and the devices used to generate electricity or heat from
3 methane produced by the anaerobic digester or to store the methane
4 for the future generation of electricity or heat.

5 (d) "District" means a district created by a local unit of
6 government under a property assessed clean energy program that lies
7 within the local unit of government's jurisdictional boundaries. A
8 local unit of government may create more than 1 district under the
9 program, and districts may be separate, overlapping, or
10 coterminous.

11 (e) "Energy efficiency improvement" means the acquisition,
12 installation, replacement, or modification of equipment, devices,
13 or materials intended to decrease energy consumption, including,
14 but not limited to, any of the following:

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

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

22 (iii) Automated energy control systems.

23 (iv) Heating, ventilating, or air-conditioning and distribution
24 systems.

25 (v) Caulking, weather-stripping, or air sealing.

26 (vi) Lighting fixtures.

27 (vii) Energy recovery systems.

28 (viii) Day lighting systems.

29 (ix) Electrical wiring or outlets to charge a motor vehicle

1 that is fully or partially powered by electricity.

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

4 (f) "Energy project" means any of the following:

5 (i) An energy efficiency improvement.

6 (ii) The acquisition, installation, replacement, or
7 modification of a renewable energy system or anaerobic digester
8 energy system.

9 (g) "Environmental hazard project" means the acquisition,
10 installation, replacement, or modification of 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 polyfluoroalkyl substance
14 (PFAS) contamination in 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 (v) Reduce emissions to outdoor or indoor air or control
21 indoor humidity.

22 (vi) Replace or improve an on-site septic sewage system,
23 including either of the following:

24 (A) Conversion to a central sewage system.

25 (B) Repairs or modifications to the on-site septic sewage
26 system or to a lateral connection to a central sewage system.

27 (h) "Governing body" means any of the following:

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

29 (ii) The township board of a township.

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

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

6 (i) "Local unit of government" means a county, township, city,
7 or village or a separate legal entity created pursuant to section 7
8 of the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL
9 124.507.

10 (j) "New construction energy project" means an energy project
11 to which either of the following applies:

12 (i) It occurs at a newly constructed building or other
13 structure.

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

16 (k) "Person" means an individual, firm, partnership,
17 association, corporation, unincorporated joint venture, or trust,
18 organized, permitted, or existing under the laws of this state or
19 any other state, including, but not limited to, a federal
20 corporation, or a combination thereof. However, person does not
21 include a local unit of government.

22 (l) "Project" means any of the following:

23 (i) An environmental hazard project.

24 (ii) An energy project.

25 (iii) Measures to reduce the usage of water or increase the
26 efficiency of water usage.

27 (m) "Property" means privately owned noncommercial,
28 nonindustrial real property located within the local unit of
29 government. However, property does not include multifamily

1 residential property with 5 or more dwelling units.

2 (n) "Property assessed clean energy program" or "program"
3 means a program as described in section 21(2).

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

7 (p) "Renewable energy resource" means a resource that
8 naturally replenishes over a human, rather than a geological, time
9 frame, and that is ultimately derived from solar power, water
10 power, or wind power. Renewable energy resource does not include
11 petroleum, nuclear, natural gas, or coal. A renewable energy
12 resource comes from the sun or from thermal inertia of the earth,
13 minimizes the output of toxic material in the conversion of the
14 energy, and includes, but is not limited to, all of the following:

15 (i) Biomass.

16 (ii) Solar and solar thermal energy.

17 (iii) Wind energy.

18 (iv) Geothermal energy.

19 (v) Methane gas captured from a landfill.

20 (q) "Renewable energy system" means a fixture, product,
21 device, or interacting group of fixtures, products, or devices on
22 the customer's side of the meter that use 1 or more renewable
23 energy resources to generate electricity. Renewable energy system
24 includes a biomass stove but does not include an incinerator or
25 digester.

26 Sec. 21. (1) Pursuant to section 22, a local unit of
27 government may establish a property assessed clean energy program
28 and may create a district or districts under the program.

29 (2) Under a property assessed clean energy program, the local

1 unit of government may enter into a contract with the record owner
2 of property within a district to finance or refinance 1 or more
3 projects on the property. The contract may provide for the
4 repayment of the cost of a project through assessments on the
5 property benefited. The financing or refinancing may include the
6 cost of materials and labor necessary for installation and of
7 permit fees, inspection fees, application and administrative fees,
8 bank fees, or any other fees that may be incurred by the record
9 owner for the installation on a specific or pro rata basis, as
10 determined by the local unit of government.

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

14 (a) Adopt a resolution of intent that includes all of the
15 following:

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

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

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

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

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

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

29 (b) Hold a public hearing at which the public may comment on

1 the proposed property assessed clean energy program, including the
2 report required by subdivision (a) (v).

3 (c) Adopt a resolution establishing the property assessed
4 clean energy program and setting forth its terms and conditions,
5 including, but not limited to, all of the following:

6 (i) Matters required by section 23(1) to be included in the
7 report. For this purpose, the resolution may incorporate the report
8 or an amended version of the report by reference.

9 (ii) A description of aspects of the program that may be
10 amended without holding a new public hearing and aspects that may
11 be amended only after a new public hearing is held.

12 (d) Offer a workshop by an organization knowledgeable about
13 property assessed clean energy program financing, to provide
14 information to realtors and other interested parties about the
15 program. The workshop shall be offered each year during the first 3
16 years of the program.

17 (2) The governing body may amend a property assessed clean
18 energy program by resolution. Before adopting the resolution, the
19 governing body shall hold a public hearing if required under
20 subsection (1) (c).

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

24 (a) A form of contract between the local unit of government
25 and the record owner governing the terms and conditions of
26 financing and assessment under the program.

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

29 (c) A maximum aggregate annual dollar amount for all financing

1 to be provided by the local unit of government under the program.

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

4 (e) A method for determining repayment periods, the maximum
5 amount of an assessment, and interest rates on assessment
6 installments.

7 (f) An explanation of how assessments will be made and
8 collected consistent with section 25(3).

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

11 (i) The sale of bonds or notes, subject to section 26.

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

14 (iii) Owner-arranged financing from a commercial lender. Under
15 owner-arranged financing, the local unit of government may impose
16 an assessment pursuant to section 24 and forward payments to the
17 commercial lender or the record owner may pay the commercial lender
18 directly.

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

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

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

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

29 (j) A requirement that the total amount of the assessments

1 under the program will not exceed 20% of the current value of the
2 property.

3 (k) A requirement that the total amount of the assessments
4 under the program on a property, plus all existing mortgage debt on
5 the property, not exceed the current value of the property.

6 (l) A requirement that the total amount of the annual
7 assessment under the program on a property not exceed 10% of the
8 annual income of the record owner.

9 (m) Provisions for marketing and participant education.

10 (n) Provisions for an adequate debt service reserve fund.

11 (o) Quality assurance and antifraud provisions.

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

14 (i) A requirement for ongoing calculation of the savings
15 realized by the record owner from the energy project.

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

21 (q) A requirement that a new construction energy project meet
22 the applicable requirements of the Stille-DeRossett-Hale single
23 state construction code act, 1972 PA 230, MCL 125.1501 to 125.1531,
24 and rules promulgated thereunder.

25 (r) A requirement that the contract and financing for the
26 project shall comply with applicable state and federal consumer
27 financial protection laws.

28 (2) The local unit of government shall make the report
29 available for review on the local unit of government's website or

1 at the office of the clerk or the official authorized to enter into
2 contracts on behalf of the local unit of government under the
3 property assessed clean energy program.

4 Sec. 24. (1) A local unit of government may impose an
5 assessment under a property assessed clean energy program only
6 pursuant to a written contract entered into under section 21(2)
7 with the record owner of the property to be assessed.

8 (2) Before entering into a contract with the record owner
9 under section 21(2), the local unit of government, using reasonable
10 means, must verify that all of the following apply:

11 (a) None of the following are delinquent with respect to the
12 property:

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

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

16 (iii) A mortgage payment.

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

18 (c) The record owner is not a party to a current bankruptcy
19 proceeding.

20 (d) The requirements of section 23(1)(j), (k), and (l) will be
21 met.

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

25 (a) The local unit of government must deliver to the record
26 owner a written financing estimate that discloses all of the
27 following:

28 (i) The project term.

29 (ii) The project interest rate and annual percentage rate.

1 (iii) The project costs, including, but not limited to, fees as
2 described in section 23(1) (h) (ii) .

3 (iv) The projected annual payment on the assessment.

4 (v) That all financing under the program, home equity lines of
5 credit, and home equity loans may need to be paid in their entirety
6 if the property is sold or refinanced.

7 (b) The record owner must acknowledge in writing that the
8 record owner has read and understands the financing estimate under
9 subdivision (a) .

10 (c) The local unit of government must conduct a live telephone
11 call with the record owner to help ensure that the record owner
12 understands the financing estimate. The call must be recorded.

13 (4) All of the following apply to a contract entered into
14 under section 21(2) :

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

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

18 (c) Payments shall be fully amortizing.

19 (d) The annual percentage rate shall be calculated using
20 generally accepted practices within the United States consumer
21 financial services industry.

22 (e) The contract may be canceled by the record owner, with or
23 without a reason and without any penalty, within 5 business days
24 after the contract is executed.

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

28 (a) The record owner of the property certifies in writing that
29 the project has been completed to the satisfaction of the record

1 owner.

2 (b) The contractor certifies in writing all of the following:

3 (i) That the project meets the requirements of this act and
4 standards established by the United States Department of Energy,
5 the Environmental Protection Agency, other federal and state
6 agencies, or reputable third parties.

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

9 (iii) That the contractor has not received and will not receive
10 a direct cash bonus or compensation, beyond payment for the
11 contracted cost of the project, in exchange for submitting an
12 application for financing the project under the program.

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

24 (2) The administrator for a local unit of government shall
25 maintain a registry of the local unit of government's liens under
26 subsection (1).

27 (3) Installments of assessments due under a property assessed
28 clean energy program shall be managed as provided in 1 of the
29 following:

1 (a) Included in each summer and winter tax bill issued under
2 the general property tax act, 1893 PA 206, MCL 211.1 to 211.155,
3 and collected at the same time and in the same manner as taxes
4 collected under that act.

5 (b) Billed and collected as provided in a special assessment
6 ordinance of general applicability adopted by the local unit of
7 government pursuant to state law or local charter.

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

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

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

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

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

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

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

28 (3) A pledge of assessments, funds, or contractual rights made
29 by a governing body in connection with the issuance of bonds or

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

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

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

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

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

24 Sec. 27. An electric or natural gas provider shall receive
25 appropriate credit toward applicable renewable energy or energy
26 waste reduction standards established under the clean and renewable
27 energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to
28 460.1211, as a result of implementation by its customer of an
29 energy project under a property assessed clean energy program.

1 Sec. 28. (1) A local unit of government may join with any
2 other local unit of government, with any other person, or with any
3 number or combination thereof, by contract or otherwise as may be
4 authorized by law, for the implementation of a property assessed
5 clean energy program, in whole or in part.

6 (2) If a property assessed clean energy program is implemented
7 jointly by 2 or more local units of government pursuant to
8 subsection (1), a single public hearing held jointly by the
9 cooperating local units of government is sufficient to satisfy the
10 requirements of section 22(1)(b).