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BILL ANALYSIS

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Senate Bill 803 (Substitute S-1 as reported) *(as enrolled)*
Sponsor: Senator Jason E. Allen
First Senate Committee: Technology and Energy
Second Senate Committee: Finance

Date Completed: 11-27-06

RATIONALE

Evidently, some Michigan utilities have been considering the installation of electricity-generating wind turbines at various locations throughout the State. Whether the wind turbines are installed, however, may depend on their eligibility for a tax exemption. The General Property Tax Act provides an exemption through 2012 for alternative energy personal property, including an alternative energy system, that has been certified by the Michigan Next Energy Authority. Under the Michigan Next Energy Authority Act, enacted in 2002, the Authority must certify alternative energy systems, and several other types of property, if the property meets certain criteria. The definition of "alternative energy system" in that Act includes a wind energy system. The wind turbines would not be eligible for the tax exemption, however, unless they were assessed as personal property, and it is the view of the Department of Treasury that electricity-generating facilities are real property. It has been suggested that a wind energy system should be statutorily classified as personal property, to make it eligible for the tax exemption extended to alternative energy systems.

CONTENT

The bill would amend the General Property Tax Act to include a wind energy system as personal property for taxes levied after December 31, 2005.

The bill would define "wind energy system" as an integrated unit consisting of a wind turbine composed of a rotor, an electrical generator, a control system, an inverter or other power conditioning unit, and a tower, that uses moving air to produce power.

MCL 211.8

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While few would dispute that wind turbines used to generate electricity are alternative energy sources, as permanent fixtures attached to the land they fall under the General Property Tax Act's definition of real property. Since the tax exemption for alternative energy systems applies only to alternative energy personal property, wind turbines will not be eligible for the exemption if they are assessed as real property. By classifying these facilities as personal property and making them eligible for the tax exemption, the bill could create an incentive for utilities and others to develop this alternative source of energy, helping to reduce reliance on fossil fuels.

The bill also would provide guidance to the State Tax Commission (STC) and prevent wind turbines from being as treated cell towers have been. Because most cell towers are on leased land, they were assessed as personal property under previous language of the General Property Tax Act, which provided that improvements and structures installed on leased property by the lessee were personal property. Since that provision was amended in 2000, cell towers became assessable as real property, but some local assessors have continued to assess them as personal property.

In addition, several wind turbines already exist in the State. While two are owned by a city and are not assessed, an assessor has assessed the others as personal property. Although this may have been incorrect under current law, the bill would provide for consistent tax treatment of wind turbines throughout the State.

Response: Because the bill's definition of "wind energy system" does not include a facility's foundation or an easement, part of a wind turbine facility could be assessed as personal property and part as real property. Unless it were clear where the personal property stopped and the real property began, it is possible that a portion of the facility could be either omitted from assessment or double-assessed. Also, splitting a facility between real and personal property can be problematic when as assessor valuates the facility based on the "income approach" (which analyzes the property's ability to produce future income and what an investor would give for the property in order to gain its income). For property that generates income, this is more reliable than the "cost approach" (which estimates the cost of replacing the asset with one similar to it). If an asset is split between real and personal property, it is not clear how the income should be divided. Also, if the taxpayer claims that the real estate is overvalued, the assessment might be lowered for the real property but not for the personal property.

To avoid these situations, the bill should treat a wind energy system as a single functional asset, by including the foundation and easement, and acknowledging that the facility is real property but assessing it as personal property. Section 8(g) of the General Property Tax Act already treats the property of certain utility companies in this manner, stating, "The mains, pipes, supports, and wires…and the *rights of way and the easements or other interests in real property* by virtue of the mains, pipes, supports, and wires are erected and maintained, shall be assessed as personal property…" (emphasis added).

In addition, the dilemma of real versus personal property could rise with respect to other types of alternative energy systems, which include solar-thermal energy systems and fuel cell energy systems. It is possible that a facility using solar panels, for example, could be assessed as either real property or personal property, or both. To avoid split assessments, it has been suggested that other alternative energy systems could be classified as personal property and/or the statutory language dealing with the exemption for alternative energy personal property could be revised.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a limited fiscal impact on State and local revenue. The treatment of the type of property affected by the bill apparently has been the subject of disagreement and variations have occurred between local units. Given the limited number of wind energy systems currently located in the State, it is likely that any fiscal impact from the bill would be minimal. To the extent that the bill resulted in reduced local unit property taxes for school operating purposes, the bill would increase expenditures from the School Aid Fund in order to maintain guaranteed per-pupil funding amounts.

Fiscal Analyst: David Zin

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