# Legislative Analysis

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## PROPERTY ASSESSED CLEAN ENERGY ACT

**House Bill 5640**
**Sponsor: Rep. Rebekah Warren**
**Committee: Great Lakes and Environment**

**Complete to 2-3-10**

## A SUMMARY OF HOUSE BILL 5640 AS INTRODUCED 12-2-09

The bill would create the "Property Assessed Clean Energy Act" authorizing a local unit of government (meaning a county, township, city, or village) to establish a program to make loans to private property owners (meaning owners and land contract purchasers) for energy efficiency improvements or the installation of renewable energy systems, as defined in the bill. The property owner or purchaser under a land contract would be required to borrow all costs associated with the project from the local unit of government.

The loans would have to be repaid through assessments on the property under a contract between the local unit of government and the property owner. Installment payments on the assessments would be collected in the same manner other property taxes are collected. The local unit of government could issue bonds or other debt instruments under the Revised Municipal Finance Act to obtain the funds to make the loans. These bonds or other debt instruments would not be considered a general obligation of the local unit of government.

## FISCAL IMPACT:

As written, the bill would have no impact on state revenues, and because it is not known to what extent local governments will participate, a precise fiscal estimate of the local impact is not possible. To the extent that local governments incur additional debt, it may increase the costs of subsequent borrowing.

## DETAILED SUMMARY:

Title. The act would be called the "Property Assessed Clean Energy Act."

Program description. Under the procedures described in the bill, a local unit of government (county, township, city or village) could establish a "property assessed clean energy program," under which it could enter into a contract with the record owner (fee title holder or land contract purchaser) of private property to finance or refinance (1) energy efficiency improvements, as defined in the bill; or (2) the acquisition, installation, and improvement of renewable energy systems, as defined in the bill, on the property. The contract would have to provide for the repayment of the loan through assessments on the property. The financing or refinancing would have to include the cost of materials and labor necessary for the installation; permit fees; inspection fees; application and administrative fees; bank fees; and all other fees that might be incurred by the local unit of government under the installation on a specific or pro rata basis.

[Note: As written, this language appears to require the property owner to take out a loan for all costs associated with the project. In addition, although this section refers to fees that may be incurred by the local unit of government under the installation, we assume that most costs related to the installation will be incurred by the property owner, not the local unit of government. The bill does, however, allow application, administration, and other program fees to be charged to participating property owners to pay for the costs incurred by the local unit of government. Although it is unclear, we assume that, among other things, this language is intended to require that program fees be included in the costs that the property owner is required to borrow and repay through the assessment.]

Steps to establish program. To establish such a program, the local governmental unit's governing body would be required to take the following actions in the following order:

- Adopt a resolution of intent that includes all of the following: (1) a finding that the financing of renewable energy systems and energy efficiency improvements is a valid public purpose; (2) a statement of intent to make financing available to property owners to be repaid by assessments on the property; (3) a description of the proposed arrangements for financing the program; (4) the types of renewable energy systems and energy efficiency improvements that may be financed; (5) a reference to a report on the proposed program and where the report is available; and (6) the time and place for a public hearing on the proposed program.
- Hold a public hearing for public comment on the proposed program and the program report.
- Adopt a resolution establishing the program and setting forth its terms and conditions.

Required report. The required report on the proposed program would have to be made available for review on the local unit of government's website or at the office of the clerk or the official authorized to enter contracts on behalf of the local unit of government.

The report would have to include all of the following information:

- A form of contract between the local unit of government and the property owner or owners governing the terms and conditions of the financing and the assessment under the program.
- The official authorized to enter into contracts on behalf of the local unit of government.
- The maximum aggregate dollar amount for all financing to be provided by the local unit of government under the program.
- An application process and eligibility requirements for a loan under the program.

- A method for determining loan interest rates, repayment periods, and the maximum amount of a loan.
- Verification that assessments will be levied and collected at the same time and in the same manner as property taxes are levied and collected.
- A plan for raising capital to finance improvements under the program. The plan could include the sale of bonds, subject to the Revised Municipal Finance Act (MCL 141.2101 to 141.2821), or the use of funds available to the local unit of government from any other source.
- Information regarding any reserve fund or funds derived from nontax revenue as security for bonds to be sold under the program.
- Information regarding application, administration, or other program fees to be charged to participating property owners that will be used to finance costs incurred by the local unit of government.

Assessments. A local unit of government could impose an assessment under such a program only under a written contract with the record owner or owners of the property to be assessed.

Verification. Before entering into a contract with a property owner under a program, the local unit of government would have to verify that there were no delinquent taxes on the property and no delinquent assessments on the property under a "property assessed clean energy program."

Lien. An assessment imposed under such a program and any interest or penalty on an assessment would constitute a lien against the property until paid in full. The lien would have the same priority and status as other property tax and assessment liens, and the local unit of government would have all rights in the case of delinquency in the payment of an assessment as it would with respect to delinquent property taxes. When the underlying debt was satisfied, the lien would be removed from the property.

Method of collecting payments. Installments for the repayment of loans made under a program would be included in each summer and winter tax bill issued under the General Property Tax Act, and would be collected at the same time and in the same manner as taxes collected under the General Property Tax Act.

Bonds. A local unit of government could issue bonds or other debt instruments to finance improvements made under such a program. The bonds or other debt instruments would be secured by the repayment of loans made under the programs. The issuance of bonds or other instruments would be subject to the Revised Municipal Finance Act. Such bonds or instruments would not be general obligations of the local unit of government. The bonds or other debt instruments would be deemed for an essential public and governmental purpose and, together with interest on or income from the bonds or other instruments, would be exempt from all taxes.

Definitions. Terms defined in the bill include:

**"Energy efficiency improvement"** means the installation or modification of equipment, devices, or materials intended to decrease electricity or natural gas consumption, including, but not limited to, 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-reflecting glazed and coated window and door systems; and additional glazing, reductions in glass area, and other window and door system modifications to reduce energy consumption.
- Automated energy control systems.
- Heating, ventilating, or air-conditioning and distribution system modifications or replacements.
- Caulking, weather-stripping, and air sealing.
- Replacement or modification of lighting fixtures to the lighting system's energy use.
- Energy recovery systems.
- Day lighting systems.
- Any other installation or modification of equipment, devices, or materials approved as a utility cost-savings measure by the governing body of the local unit of government.

[Note: It would appear that if a home or other building was not already heated with natural gas, the property owner might not quality for an energy efficiency improvement loan under one of these programs (unless the project also decreased electricity consumption) because only projects designed to decrease the consumption of electricity or natural gas qualify. For example, if a homeowner or business heated with coal, wood or oil, a furnace replacement project would probably not qualify as one "intended to decrease consumption of electricity or natural gas." If the property owner replaced a coal, wood, or oil furnace with one using natural gas, natural gas consumption on the property would increase rather than decrease.]

**"Local unit of government"** would mean a county, township, city, or village.

**"Property"** would mean "privately owned real property located within the local unit of government."

**"Record owner"** would mean "an individual, sole proprietorship, partnership, association, firm, corporation, or other legal entity, possessed of the most recent fee title or land contract vendee's interest in property as shown by the records of the county register of deeds." (In other words, businesses, individuals, and other entities with fee titles or purchasing the property under a land contract would qualify; renters would not.)

**"Renewable energy resource"** would mean a resource that naturally replenishes over a human, not a geological time frame that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal.  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 and includes, but is not limited to, all of the following:

- Biomass.
- Solar and solar thermal energy.
- Wind energy.
- Geothermal energy.

**"Renewable energy system"** would mean "a fixture, product, device, or interacting group of fixtures, products, or devices installed on the customer's side of the meter that use one or more renewable energy resources to generate electricity. Renewable energy system includes a biomass stove but does not include an incinerator or digester."

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