

TAX TREATMENT OF ALTERNATIVE ENERGY SYSTEMS

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House Bill 5143 (reported from committee as substitute H-4)

House Bill 5680 (reported from committee as substitute H-1)

Sponsor: Rep. Tom Barrett

Committee: Tax Policy

Complete to 5-9-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Together, House Bills 5143 and 5680 would revise the tax treatment of alternative energy systems and generally provide for tax exemptions. House Bill 5143 would address the commercial or industrial application of these systems, and House Bill 5680 would address the residential application.

FISCAL IMPACT: For a discussion of the bills' potential fiscal impact on the state and local units of government, see *Fiscal Information*, below.

THE APPARENT PROBLEM:

The classification and associated taxation of solar panels has been subject to different interpretations, guidelines, and assessment practices over time and across the state. From 2003 to 2013, solar panels could be exempt from property taxes under a specific provision that classified the property as “alternative energy personal property.” That exemption, however, has ended.

In June 2013, the State Tax Commission (STC) provided a memorandum classifying solar panels as industrial personal property.¹ With that determination, the panels would be exempt from the 6-mill state education tax and the 18-mill non-homestead levy earmarked for local schools. Shortly thereafter, in 2014, the property could be exempt from taxation under the small taxpayer exemption, so long as the true cash value of the panels was less than \$80,000.

Most recently, in February 2018, the STC issued another memorandum classifying residential solar panels as residential real property to be assessed as a component of the real property.² With this determination, the value of a residential solar panel installation would be included in assessed and taxable values. Essentially, installing solar panels on a home would likely lead to increased property taxes beyond the taxable value cap.

Regardless of the classification of solar panels—whether personal, industrial, or real property—some believe that state tax policy should encourage the adoption of these environmentally beneficial energy systems, and that previously enjoyed tax benefits should

¹ See “Classification of Solar Panels” under **Real and Personal Property**.
https://www.michigan.gov/treasury/0,4679,7-121-1751_2228-373376--,00.html

² https://www.michigan.gov/documents/treasury/Memo_To_STC_-_Solar_Panels_613739_7.pdf

be preserved for those with existing systems. Legislation has been introduced to provide property tax benefits for alternative energy systems.

THE CONTENT OF THE BILLS:

House Bill 5143 would amend the General Property Tax Act. Currently under the Act, there is a personal property tax exemption for “alternative energy personal property,” but the exemption applies only to taxes levied after December 31, 2002 and before January 1, 2013. The Michigan Next Energy Authority certified the personal property as eligible for the exemption. Both local school districts and local tax collecting units could adopt resolutions disallowing exemptions from certain taxes.

The bill would eliminate the certification and resolution process. The personal property tax exemption would apply to the type of alternative energy personal property that is described as an ***alternative energy system***, for taxes levied after the effective date of the bill, regardless of the ownership of the alternative energy personal property.

Alternative energy system is defined in the Michigan Next Energy Authority Act and means the small-scale generation or release of energy from one of thirteen energy systems, alone or in combination, including photovoltaic and wind energy systems (MCL 207.822).

The exemption would apply if all of the following conditions were met:

- The alternative energy personal property had a generating capacity of not more than 150 kilowatts and was used solely to offset all or a portion of the commercial or industrial energy usage of the person upon whose real property the alternative energy personal property is located.
- If installed after the effective date of the bill, the alternative energy personal property had a true cash value that, when combined with the true cash value exempt under section 9o as eligible personal property of the person claiming the alternative energy personal property exemption or a related entity, equaled less than \$80,000.

MCL 211.9i

House Bill 5680 would also amend the General Property Tax Act. Currently under the Act, in determining the true cash value of residential property for assessment purposes, assessors cannot consider the increase in true cash value resulting from expenditures for normal repairs, replacement, and maintenance, until the property is sold. The repairs are considered normal maintenance if they are not part of a structural addition or completion. The increase in value attributable to those activities that is known to the assessor is excluded from true cash value but is indicated on the assessment roll.

The Act enumerates a list of such maintenance and repair activities.³ Examples include inside or outside painting; repairs; adding gutters or downspouts; and replacing plumbing, furnaces, or hot water heaters.

The bill would add the following to the list of normal maintenance activities: installing, replacing, or repairing an **alternative energy system** with a generating capacity of not more than 150 kilowatts, the annual energy output of which does not exceed the annual energy consumption measured by the electrical meter on the system to which it is connected. This would apply regardless of the ownership of the system.

Alternative energy system would have the same definition as that referenced in House Bill 5143.

The bill would also amend a section of the General Property Tax Act that defines the term “additions” for purposes of determining a property’s taxable value under the Act and sections 3 and 31 of article IX of the state constitution. Currently under the Act, “additions” includes “new construction,” which is property not in existence on the immediately preceding tax day and not replacement construction, and which includes the physical addition of equipment or furnishings, except for normal maintenance activities as described above. The bill would amend this provision to include the installation, replacement, or repair of an alternative energy system among the normal maintenance activities that are excluded from the definitions of “additions” and “new construction” for purposes of determining a property’s taxable value.

MCL 211.27 and 211.34d

FISCAL INFORMATION:

House Bill 5143

To the extent that the personal property is exempt under current law, the bill would have no fiscal impact on state or local governments. According to the Department of Treasury, the personal property covered by the bill is currently subject to exemption through the small taxpayer exemption included in the personal property tax reforms initiated in 2012. If, due to the provisions contained in the bill, newly eligible personal property were deemed exempt, the bill would result in reduced revenues for local units of government. Any revenue impact would depend on the taxable value of the personal property and the millage rate of the local unit of government. Because solar panels and wind turbines are generally classified as industrial personal property and already exempt from the 6-mill state education tax and the 18-mill non-homestead levy earmarked for local schools, the majority of any revenue reduction would be absorbed by local governments.

³ This section of the law is commonly referred to as the Mathieu-Gast Home Improvement Act, or simply “Mathieu-Gast.” For more, see https://www.michigan.gov/documents/taxes/Bulletin_7_of_2014_Mathieu_Gast_458960_7.pdf

House Bill 5680

The statewide taxable value of solar panel systems with a generating capacity of not more than 150 kilowatts is unknown; therefore, the revenue impact for state and local governments is difficult to determine.

To the extent that solar panels were previously classified as residential real property and subject to state and local taxation, the bill would reduce revenues for state and local governments. The provisions of the bill would reduce revenue from the 6-mill state education tax and, in some instances, the 18-mill non-homestead levy earmarked for local schools. Local governments would realize revenue losses in an amount equal to the taxable value of the exempted property multiplied by the local unit's millage rate.

However, in most instances, prior to the February 13, 2018 State Tax Commission guidance that classified solar panels as a component of residential real property if they are located on a parcel of residential real property, solar panels were classified as industrial personal property and considered exempt from the 6-mill state education tax and the 18-mill non-homestead levy earmarked for local schools. Despite the State Tax Commission's reclassification of residential solar panels as residential real property, the bill would continue to exempt solar panels from these two tax levies by excluding solar panels from the calculation of the true cash value of residential real property.

The classification of solar panels as industrial personal property allowed individuals to claim the small taxpayer exemption under the personal property tax phase-out beginning in 2014. To the extent that an owner of residential real property claimed the small taxpayer exemption for solar panels, a local unit of government would realize no revenue impact. Conversely, if the individual did not claim the small taxpayer exemption, the bill would reduce local revenues by an amount equal to the taxable value of the exempted property multiplied by the local unit's millage rate, due to the exclusion of solar panels in determining the true cash value of residential real property. It should be noted that, upon sale of a parcel of residential real property, the value of the solar panels could be used in calculating the true cash value and therefore be considered subject to the 6-mill state education tax, the 18-mill non-homestead levy earmarked for local schools, and any local millage.

ARGUMENTS:

For:

House Bill 5680 provides clarity to all stakeholders with regard to the tax treatment of residential solar panels. There has been inconsistency across the state, resulting in confusion for homeowners and assessors; this culminated in a recent court case involving a homeowner and the City of Ann Arbor. The bill simply treats solar panels like any other maintenance or energy-related home improvement, such as installing a new furnace or hot water heater. These activities do not contribute to the taxable value of the home while the person lives there, but are reflected in the home's assessment when it is sold. State tax policy should encourage the use and adoption of these environmentally friendly systems.

For:

Property owners that install solar panel systems have often spent a considerable amount of money up front, with the expectation that financial incentives and a long-term horizon will lead to eventual energy cost savings. Additionally, many are compelled to install them because of the environmental benefits. Until 2013, the property could be exempt in conjunction with a program through the Michigan Next Energy Authority. After 2013, the property could continue to receive tax benefits through its classification as industrial personal property. There has been a long history of tax benefits for these systems, and those benefits should continue.

Against:

House Bill 5143 is simply unnecessary. Alternative energy personal property can already be exempt from taxation under the small taxpayer exemption, as long as the true cash value is less than \$80,000. The bill simply adds confusion and is not necessary.

Additionally, the definition of “alternative energy system” in the bill is excessive. It encompasses 13 different energy systems, including a “biomass energy system” and a “Stirling cycle energy system.” The definition should be rewritten to include only the systems being addressed by the situation at hand—namely, photovoltaic energy systems.

POSITIONS:

Representatives of the Michigan Department of Treasury testified in support of House Bill 5680. (5-2-18)

The following entities indicated support for the bills (5-2-18):

- The Michigan Environmental Council
- The Alliance for Solar Choice
- The Michigan Farm Bureau
- The Michigan Energy Innovation Business Council
- The Michigan Agribusiness Association

The Michigan Municipal League indicated support for House Bill 5680. (5-2-18)

Representatives of the Michigan Department of Treasury testified in opposition to House Bill 5143. (5-2-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.