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BILL



ANALYSIS

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House Bill 5143 (Substitute H-4 as passed by the House)  
House Bill 5680 (Substitute H-1 as passed by the House)  
Sponsor: Representative Tom Barrett  
House Committee: Tax Policy  
Senate Committee: Finance

Date Completed: 9-5-18

### **CONTENT**

**House Bill 5143 (H-4) would amend the General Property Tax Act to do the following:**

- Delete the certification and resolution process for alternative energy personal property tax exemptions.
- Apply the alternative energy personal property exemption to taxes levied on an alternative energy system after the bill's effective date, provided that it met certain conditions.

**House Bill 5680 (H-1) would amend the General Property Tax Act to specify that installing, replacing, or repairing an alternative energy system with a generating capacity of not more than 150 kilowatts would be considered normal maintenance if it were not a part of a structural addition or completion for the purposes of determining a property's taxable value.**

The bills are tie-barred to each other.

### **House Bill 5143 (H-4)**

#### **Alternative Energy Personal Property Exemption**

The General Property Tax Act exempts alternative energy personal property from the collection of taxes under the Act. The exemption applies to taxes levied after December 31, 2002, and before January 1, 2013.

"Alternative energy personal property" means all of the following:

- An alternative energy system.
- An alternative energy vehicle.
- All personal property of an alternative energy technology business.
- The personal property of a business that is not an alternative energy technology business that is used solely for the purpose of researching, developing, or manufacturing an alternative energy technology.

#### **Exemption Process & Applicability**

Under the Act, if the Michigan Next Energy Authority certifies alternative energy personal property as eligible for the exemption as provided in the Michigan Next Energy Authority Act,

the Authority must forward a copy of that certification to the secretary of the local school district, and the treasurer of the local tax collecting unit, in which the alternative energy personal property is located.

Within 60 days after receiving the certification, the school board for the local school district in which the alternative energy personal property is located may adopt a resolution not to exempt that alternative energy personal property from a tax levied in that local school district under Section 1212 of the Revised School Code (which allows the board of a school district to levy a tax on the taxable value of the real and personal property of the school district each year for the purpose of creating a sinking fund) or a tax levied to retire outstanding bonded indebtedness. If a resolution is not adopted, that alternative energy personal property is exempt from those taxes levied after December 31, 2002, and before January 1, 2013.

Within 60 days after receiving the certification of alternative energy personal property, the governing body of the local tax collecting unit in which the alternative energy personal property is located may adopt a resolution not to exempt it from the taxes collected in that local tax collecting unit, except for taxes collected under Sections 1211 and 1212 of the Code, (Section 1211 of the Code specifies the number of mills the board of a school district may levy for school operating purposes), a tax levied under the Code to retire outstanding bonded indebtedness, or the tax levied by the State under the State Education Tax Act. If a resolution is not adopted, that alternative energy personal property is exempt from the taxes collected in that local tax collecting unit.

The bill would delete these provisions.

Under the bill, alternative energy personal property would remain exempt from the collection of taxes under the General Property Tax Act. However, the exemption would apply to taxes levied on alternative energy personal property after December 31, 2002, and before January 1, 2013, and taxes levied on an alternative energy system after the bill's effective date, without regard to ownership of the alternative energy personal property, provided that 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 was located.
- If installed after the bill's effective date, the alternative energy personal property had a true cash value that, when combined with the true cash value of all personal property exempt under Section 9o of the Act as eligible personal property of the person claiming the exemption or a related entity, equaled less than \$80,000.

(The Michigan Next Energy Authority Act defines "alternative energy system" as the small-scale generation or release of energy from one or any combination of the following types of energy systems: a) a fuel cell energy system; b) a photovoltaic energy system; c) a solar-thermal energy system; d) a wind energy system; e) a CHP energy system; f) a microturbine energy system; g) a miniturbine energy system; h) a Stirling cycle energy system; i) a battery cell energy system; j) a clean fuel energy system; k) an electricity storage system; l) a biomass energy system; or m) a thermoelectric energy system.)

### **House Bill 5680 (H-1)**

The General Property Tax Act specifies that an assessor may not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of residential property for assessment purposes until the

property is sold. The Act includes a list of repairs that are considered normal maintenance if they are not part of a structural addition or completion, such as outside painting, adding or replacing gutters and downspouts, or complete rewiring.

The bill would include in this list installing, replacing, or repairing an alternative energy system, without regard to ownership of the system, with a generating capacity of not more than 150 kilowatts, the annual energy output of which did not exceed the annual energy consumption measured by the utility-provided electrical meter on the system to which it was connected.

For the purposes of determining a property's taxable value under the Act and the Michigan Constitution, for taxes levied after 1994, "additions" means, among other things, new construction. "New construction" means property not in existence on the immediately preceding tax day and not replacement construction. The term includes the physical addition of equipment or furnishings, subject to the list of repairs considered normal maintenance described above. The bill would include the installation, replacement, or repair of an alternative energy system among the normal maintenance activities that would be excluded from the definitions of "additions" and "new construction" as used in the Act and Michigan Constitution for the purposes of determining a property's taxable value.

MCL 211.9i (H.B. 5143)  
211.27 & 211.34d (H.B. 5680)

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

The bills would reduce State and local property tax revenue, and increase School Aid Fund expenditures, by an unknown amount that would depend on the value of the affected property, local millage rates, and the number of parcels affected.

Under current legal interpretations, most solar energy/solar panels are already exempt from the State Education Tax and the 18 mills levied on non homestead property for local school operating purposes. As a result, for solar-related property, the bills would have no effect on State revenue or expense, although the bills would reduce local unit revenue. For alternative energy property other than solar-related property, the bills would reduce both State and local revenue, and increase School Aid Fund expenditures, if per pupil allowances were to be maintained.

The bills do present several technical issues, including some that affect the magnitude of any revenue loss. For example, House Bill 5143 Section 2(B)(ii) would apply only to property installed after the bill's effective date. As a result, the bill would fully exempt affected property installed before the bill's effective date but would subject property installed after the bill's effective date to a limit of \$80,000 in true cash value. Additionally, unlike the limit imposed by section 9o (to which the bill refers), the bill does not appear to define the relevant jurisdiction for the \$80,000 limit. As a result, it is unclear if the \$80,000 limit would apply on a taxing unit basis (as in section 9o), or if it would apply on a statewide basis, or taxpayer basis, or some other jurisdictional level. Furthermore, the bill would permit a taxpayer that was not claiming the exemption under 9o to claim an \$80,000 exemption for affected property, even if the reason the taxpayer was not claiming the exemption was because the other personal property owned by the taxpayer exceeded \$80,000 in true cash value.

In House Bill 5680, the bill would add "installing" alternative energy property as part of the definition of "normal maintenance", in addition to replacing or repairing such property. However, the section would permit normal maintenance to be exempted from consideration only if it were "not part of a structural addition". Assessors are likely to differ in their

interpretations as to whether or not installing new alternative energy property constitutes a "part of a structural addition", especially when no alternative energy has previously been affixed to the property.

Fiscal Analyst: David Zin

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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.