

# Legislative Analysis



## RENEWABLE ENERGY FACILITIES PAYMENT IN LIEU OF TAX ACT

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**Senate Bill 1105 (proposed substitute H-1)**  
**Sponsor: Sen. Curtis S. VanderWall**

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

**Senate Bill 1106 as passed by the Senate**  
**Sponsor: Sen. Kevin Daley**

**House Committee: Ways and Means**  
**Senate Committee: Finance**  
**Complete to 12-15-20**

### SUMMARY:

Senate Bill 1105 would create a new act, the Renewable Energy Facilities Payment in Lieu of Tax Act, which would allow a renewable energy facility to apply to its local governmental assessing authority for an exemption, be granted the exemption, and be responsible for paying an annual payment in lieu of tax. Senate Bill 1106 would provide for this exemption in the General Property Tax Act.

The General Property Tax Act provides that all property, real and personal, within the jurisdiction of the state that is not expressly exempted is subject to taxation. Beginning with section 7 of the act, approximately 40 real estate exemptions are listed.

**Senate Bill 1105** would create an additional exemption for renewable energy facilities, which the owner or lessee of a *qualified renewable energy facility* could file with the clerk of the applicable local governmental assessing authority. The exemption would not apply to qualified renewable energy facilities if an agreement already exists unless the local authority and owner agreed to renegotiate a new agreement that included it.

*Qualified renewable energy facility* would mean a facility not placed in service at the time of application that uses solar energy as the sole fuel source for generation of at least one megawatt of nameplate capacity, alternating current, including any energy storage devices that store energy primarily from the facility, and all other equipment and materials constituting the facility.

#### Approval/disapproval process

Within 60 days of a facility's application, the local authority's governing body would have to determine whether the facility qualified and approve or disapprove the application by resolution. If it approved the application, the governing board would have to forward the resolution and application to the State Tax Commission (STC) within 30 days of approval or before October 31 of the year, whichever is first. Approval by the local authority's governing body would not affect or constitute any other necessary government approval. If the application was disapproved, the governing board would have to include the reasons

in its resolution and notify the applicant within 10 days of disapproval. The applicant could file an appeal to the STC within 10 days of notice.

As long as the application was submitted before October 31 and approved, the STC would have to issue the exemption certificate within 60 days. The exemption would be effective on the immediately succeeding December 31 (except that no certificate could take effect before December 31, 2022). The STC would have to send the certificate to the applicant and to the assessor of the applicable assessing unit, to be filed in the assessor's office.

#### Appeal process

Within 60 days of the filing of an appeal, the STC would have to affirm or reverse the application based on its merits. If it affirms the disapproval, it would have to notify the applicant by mail. If it reverses the disapproval, it would have to issue a certificate effective on the immediately succeeding December 31 and transmit copies to the applicant and the assessor of the applicable assessing unit, to be filed in the assessor's office.

#### Exemption

Beginning on the certificate's effective date and continuing as described below (see "Term of the exemption"), the facility would be exempt from both of the following:

- The collection of taxes under the General Property Tax Act, as provided in SB 1106.
- If operated by a lessee, occupant, user, or other person that does not own the facility, ad valorem taxes imposed under 1953 PA 189 to the same extent as if that person owned the facility.

#### Annual payment in lieu of tax

An owner or lessee of a facility that received the exemption would have to make an annual payment in lieu of tax of \$4,000 per megawatt of nameplate capacity, alternating current, plus an additional \$500 per megawatt of nameplate capacity, alternating current, of any energy storage device that is part of the qualified renewable energy facility, unless the owner or lessee and the local authority agreed to a lesser amount. The owner or lessee and the local authority could also agree to a shorter duration for the exemption than the period that otherwise might apply, whether or not the agreement also reduced the annual payment in lieu of tax.

The local tax collecting unit would have to collect these payments in lieu of taxes annually on September 14 and disburse them to and among the state, cities, townships, villages, school districts, counties, and other taxing authorities. The collection and disbursement would have to conform with the requirements under the General Property Tax Act, excluding any distribution that would have been made under the Revised School Code and State Education Tax Act.

Until paid, the annual payment amount in lieu of tax would be a lien on the facility beginning on its due date. The lien could be enforced in the same manner as mortgage liens against real property.

#### Term of the exemption

An exemption certificate would remain in force from its effective date until the earliest of the following:

- The date the facility permanently ceases commercial operation.
- A termination date mutually agreed upon by the owner or lessee and the local authority.
- If the owner or lessee fails to make the required annual payment in lieu of tax by the March 1 after the due date, and the local authority revokes the certificate for that reason, on the December 31 after the revocation. (An aggrieved party could appeal the local authority's revocation to the STC or the Tax Tribunal.)

#### Certificate form

A certificate would have to be in a form prescribed by the STC and include all of the following:

- A description of the facility, including the personal property tax parcel assigned to the facility.
- A legal description of the real property on which the facility is or will be located
- A statement that, unless revoked as provided above, the certificate remains in force for the period stated in the certificate.

The certificate would have to be accompanied by a copy of any annual payment in lieu of tax agreement entered into by the local authority and owner or lessee.

#### Transfer of the exemption certificate

A holder of the exemption certificate could transfer it to a new owner or lessee of the facility. The holder would have to notify the local governmental assessing authority of the transfer, and the new owner or lessee would have to be assigned any contract as to the annual payment in lieu of tax.

**Senate Bill 1106** would amend the General Property Tax Act to provide for the renewable energy facilities exemption described in SB 1105. It would provide that a facility issued a certificate, but not the land on which the facility is or would be located, is exempt from the collection of taxes under the act while the certificate is in force.

Proposed MCL 211.7xx

The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

### **FISCAL IMPACT:**

Collectively, the bills would have an indeterminate fiscal impact on revenues for local units of government. The fiscal impact would vary by local unit and depend on current millage rates and characteristics (nameplate capacity) and current tax treatment of any facility that would qualify as a qualified renewable energy facility. Some local units likely would realize a revenue loss, while others could realize an increase in revenues depending on the difference between the payments in lieu of taxes (PILTs) and property taxes and the

election of the qualified renewable energy facility. Filing for the exemption would be optional; therefore, whether a qualified renewable energy facility chose to file for an exemption under the bill likely would depend on whether its PILT under the bill would be less than the local property taxes it would pay.

In addition to the exemption of property taxes, the bill would exempt qualified facilities from the State Education Tax (SET) and school operating mills. However, it is likely that qualified facilities would already be exempt from these taxes under existing statutory exemptions.

It is unclear whether the distribution of PILT would hold the SET and school operating millages collections harmless by first allowing for a full reimbursement of SET and school operating millages lost revenue first and then subjecting the remainder of the taxing units to prorated payments or whether the exclusion language in the distribution of PILT exempts the SET and school operating millages from being reimbursed at all. If the former, there would be no fiscal impact on the School Aid Fund (SAF). If the latter, the fiscal impact would depend on whether it is assumed that the property is already exempt from the SET and school operating millages under current statute:

- If it is assumed that the property is already exempt from the SET and school operating mills, there would be no fiscal impact on the SAF.
- If it is assumed that the property is not currently exempt from SET and school operating millages, then the SAF would absorb the entire loss. If the per pupil foundation allowance was maintained, the state costs associated with the foundation allowance would increase.

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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.