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Senate Bills 1105 and 1106 (as introduced 9-10-20)
Sponsor: Senator Curtis S. VanderWall
Committee: Finance

Date Completed: 11-5-20

CONTENT

Senate Bill 1105 would enact the "Renewable Energy Facilities Payment in Lieu of Tax Act" to do the following:

- Allow an owner or lessee of a qualified renewable energy facility to file an application for a renewable energy facilities exemption certificate with the clerk of the local governmental assessing authority where the facility was or would be located.
- Require the legislative body of the assessing authority to approve the application within 60 days of receiving it unless it determined the applicant was not eligible for the exemption.
- Prescribe the information that would have to be included in an application for a certificate.
- Specify that, while its renewable energy facilities exemption certificate was in force, a facility would be exempt from property tax and ad valorem taxes imposed under Public Act 189 of 1953.
- Require an owner or lessee of a facility for which a certificate was issued to make an annual payment in lieu of tax of \$3,500 per megawatt of nameplate capacity, unless the owner or lessee of the facility and the local governmental assessing authority agreed to a lesser amount.
- Specify that a certificate issued under the proposed Act would be in force beginning on its effective date and ending on the date the facility permanently ceased operation, an agreed upon termination date, or the date of revocation, whichever was earlier.

Senate Bill 1106 would amend the General Property Tax Act to specify that a facility for which a renewable energy facilities exemption certificate issued under the proposed Renewable Energy Facilities Payment in Lieu of Tax Act, but not the land on which the facility was or would be located, would be exempt from tax collected under the General Property Tax Act for the period beginning on the certificate's effective date and continuing as long as the certificate was in force.

The bills are tie-barred.

Senate Bill 1105 is discussed in greater detail below.

Definitions

"Qualified renewable energy facility" would mean a solar energy facility or an energy storage system. The term would not include the land on which the facility is or will be located. "Solar

energy facility" would mean a proposed or existing facility that uses solar energy as the sole fuel source for the generation of electricity, including any battery energy storage devices systems that store energy primarily from the solar facility, and all other equipment and materials that comprise the facility. "Energy storage facility" would mean commercially available technology that, by chemical, thermal, mechanical, or other means, is capable of storing energy for a period of time before returning the energy in the form of electricity.

"Local governmental assessing authority" would mean the local governmental jurisdiction charged with assessing properties subject to property taxes under the General Property Tax Act.

Application for Renewable Energy Facilities Exemption Certificate

Under the proposed Renewable Energy Facilities Payment in Lieu of Tax Act, an owner or lessee of a qualified renewable energy facility could file an application for a renewable energy facilities exemption certificate with the clerk of the local governmental assessing authority where the facility was or would be located. The application would have to be filed in the form and manner prescribed by the State Tax Commission.

The legislative body of the assessing authority, within 60 days after the clerk's receipt of the application, would have to approve the application, by resolution, unless it determined the applicant was not eligible for the exemption. If it approved the application, the legislative body would have to issue a certificate for the facility effective on the immediately succeeding December 31.

Certificate Information & Transfers

A renewable energy facilities exemption certificate would have to be in a form prescribed by the State Tax Commission and, at a minimum, would have to include all of the following information.

- 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 was or would be located.
- A statement that unless revoked as provided under the proposed Act, the certificate would remain in force for the period stated in the certificate.

A copy of an agreement entered into by the authority and the owner or lessee would have to be attached to the certificate.

The holder of a certificate could transfer it to a new owner or lessee of the qualified renewable energy facility. The certificate 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 entered into under the Act.

Exemption from Taxation & Payments in Lieu of Taxes

Beginning on its certificate's effective date, and continuing until for the period prescribed below, a qualified renewable energy facility would be exempt from both of the following:

- The collection of taxes under the General Property Tax Act, as provided in Section 7xx of the General Property Tax Act (which Senate Bill 1106 would add).
- If the facility were operated by a lessee, occupant, user, or other person that does not own the facility, ad valorem taxes imposed under Public Act 189 of 1953 (which provides

for the taxation of lessees and users of tax-exempt property) to the same extent as though that lessee, occupant, user, or other person owned the facility.

An owner or lessee of a qualified renewable energy facility for which a certificate was issued would have to make an annual payment in lieu of tax in the amount of \$3,500 per megawatt of nameplate capacity, unless the owner or lessee and the local governmental assessing authority agree to a lesser amount per megawatt of nameplate capacity. The owner or lessee and the authority also could agree to a shorter duration for the exemption certificate than the period that might otherwise apply, regardless of whether the agreement included a provision decreasing the annual amount of the payment in lieu of tax.

The local tax collecting unit would have collect payments in lieu of taxes made under the proposed Act annually on September 14 in the same manner as taxes collected under the General Property Tax Act. Except as otherwise provided, the unit would have to disburse payments in lieu of taxes made under the proposed Act to and among the State, cities, townships, villages, school districts, counties, and other taxing authorities at the same time and in the same proportions as required by the law for the disbursement of taxes collected under the General Property Tax Act, excluding any disbursement that otherwise would be made to a local district for school operating purposes under the Revised School Code or to the State under the State Education Tax Act.

The amount of the annual payment in lieu of tax applicable to a qualified renewable energy facility, until paid, would be a lien on the facility on the date the annual payment was due. The lien could be enforced in the same manner as provided by law for the foreclosure in the circuit courts of mortgage liens on real property.

Duration of Certification & Revocation

A renewable energy facilities exemption certificate would remain in force for a period beginning on its effective date and ending on the earliest of the following:

- The date the facility permanently ceased operation.
- A termination date agreed upon by the owner or lessee of the facility and the local governmental assessing authority.
- The date of revocation.

A certificate could be revoked by an authority if there had been a final judicial determination that the owner or lessee of the facility had failed to make a payment required by, or breached an agreement entered into under, the Act. A revocation would be effective beginning December 31 immediately succeeding the final judicial determination.

Proposed MCL 211.7xx

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bills likely would have an indeterminate, although likely negative, fiscal impact on local governments of unknown magnitude. Qualified facilities that received an exemption would be exempt from property taxes, including school operating millages and the State Education Tax. However, most facilities likely are exempt from the State Education Tax and local school operating mills under existing exemptions. The payments in lieu of taxes taxpayers would be required to pay under the bill would be distributed in the same proportion as the property taxes exempted, excluding any payments for school operating millages and the State Education Tax (assuming these millages were levied on the property). Because the decision to apply for an exemption would be voluntary, it is assumed that a qualified facility would

apply for an exemption only if the payments in lieu of taxes would be less than the normal property taxes owed for the facility.

The wording in the bills is somewhat ambiguous regarding how State Education Tax and school operating mills would be addressed by the local tax collecting unit. It is unclear if the "excluding" language regarding these payments is intend to mean a) that the State Education Tax and school operating payments would have to be subtracted first (holding the School Aid Fund harmless from any changes in the bill) and the remaining revenue prorated across the remaining taxing jurisdictions, or b) if the revenue generated from the payment in lieu of taxes would have to be made only to taxing jurisdictions other than the State Education Tax or local school districts for school operating purposes (meaning that the School Aid Fund would bear 100% of the loss while other taxing jurisdictions would bear a prorated loss).

If the first interpretation is correct, the bills would have no fiscal impact on the State Education Tax or the School Aid Fund, and any revenue loss would be experienced by other tax jurisdictions, with the majority of the impact falling on local units of government. If the second interpretation is correct, State revenue from the State Education Tax to the School Aid Fund would be reduced, and the State costs of the foundation allowance would increase if the per pupil foundation allowance were maintained. Other taxing jurisdictions, primarily local units of government, likely would receive less revenue than under current law, but more revenue than they would under the first interpretation.

The fiscal impact for any given jurisdiction would depend on the nameplate capacity of the facility exempted, as well as the taxable value of the facility and local millage rates.

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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.