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CREATING SOLAR ENERGY DISTRICTS AND THE SOLAR ENERGY FACILITIES TAX

House Bill 4317 (H-1) as reported from committee
Sponsor: Rep. Curt S. VanderWall

House Bill 4318 as reported from committee
Sponsor: Rep. Cynthia Neeley

Committee: Tax Policy
Complete to 6-22-23

(Enacted as Public Acts 108 and 109 of 2023)

SUMMARY:

House Bill 4317 would create the Solar Energy Facilities Taxation Act. The act would provide for the establishment of solar energy districts in ***qualified local governmental units*** and the issuance of solar energy exemption certificates to ***qualified solar energy facilities*** not yet placed in service in these districts. Facilities with approved certificates, but not the land they are on, would be exempt from ad valorem property taxes under the General Property Tax Act and would instead be subject to the solar energy facilities tax. House Bill 4318 would amend the General Property Tax Act to make complementary changes implementing that exemption.

Qualified local government unit would mean a city, village, or township.

Qualified solar energy facility or ***qualified facility*** would mean a facility, whether owned or leased, that when placed in service is located in a solar energy district and that uses or will use solar energy as the sole source for the generation of at least 2 megawatts of nameplate capacity, alternating current, including any solar modules, inverter, racks, tracking, on-site battery storage systems if identified in the application, controls, electric interface, and all components that are positioned up to, and including, the inversion of the current delivered from the facility. The term would include all land improvements, except buildings, exclusively used for the generation of solar energy at the facility, including access roads, security fences, and communication facilities. It would not include any distribution or transmission lines.

Establishing solar energy districts

Under House Bill 4317, a qualified local governmental unit could establish one or more solar energy districts in either of the following ways:

- By resolution of the legislative body of the qualified local government unit that has a zoning ordinance within its zoning jurisdiction, provided the requirements described below are met. The district could be established on the legislative body's own initiative or upon a written request filed with the clerk of the local governmental unit by the owner or owners of real property constituting more than 50% of all taxable value of the property located in the proposed district.
- By the existence or establishment of a zoning ordinance designating the area within the qualified local governmental unit where a qualified solar energy facility can be located as a permitted or special use.

In addition, all land within a qualified local governmental unit that has no zoning ordinance within its zoning jurisdiction would be a solar energy district, unless the local government established a district by resolution of its governing body before receiving an application under the act.

Before adopting a resolution to establish a district in a local unit with a zoning ordinance, the legislative body would have to send written notice by certified mail to each taxing unit that levies ad valorem property taxes and the owners of all real property in the proposed district. In addition, a hearing on the establishment of the district where those owners, taxing units, or any other resident or taxpayer of the local unit could be heard would have to be set, with at least 10 days and not more than 30 days of public notice. Public notices would have to be posted on the qualified local governmental unit's website, if available, and in a location open to the public in the office of the qualified local governmental unit.

Solar energy exemption certificate application and approval

After the establishment of a solar energy district or simultaneously with a request to establish a district, the owner or lessee of a qualified facility not yet placed in service could apply for a solar energy exemption certificate with the clerk of the qualified local governmental unit, in a manner and form prescribed by the STC. The local governmental unit could charge the applicant a fee for processing the application, not to exceed the lesser of $30,000 or the actual cost incurred by the local government in processing the application.

The application would have to include all of the following:

- A general description of the facility, including the proposed nameplate capacity and itemized list of facility components, including any on-site battery storage.
- A general description of the proposed use of the facility.
- A description of the general nature and extent of the new construction.
- A time schedule for undertaking and completing the facility.
- Information relating to the required estimate of the assessed and taxable value of the facility described below. All cost information regarding the claim for an exemption would be considered taxpayer confidential information and would not be subject to disclosure under the Freedom of Information Act (FOIA).
- The proposed location of the facility.
- For a leased facility, a copy of the lease agreement or other writing confirming that the lessee is liable for payment of the specific tax for the length of the certificate and proof of that liability.
- For a facility located on leased real property or an easement, a copy of the memorandum of lease or memorandum of easement, which must confirm that the duration of any lease of the real property where the facility is located, including all options to extend that duration, is equal to or exceeds the duration of the certificate.

Upon receipt of the application, the clerk of the qualified local governmental unit would have to provide written notice of the application to the STC, to the assessor of the local tax collecting unit in which the facility is located, and to the legislative body of each taxing unit that levies ad valorem property taxes in the qualified local governmental unit in which the facility is located.

Upon receiving notice of the filing of an application, an assessor would be required to estimate the assessed value and taxable value of the facility and furnish this estimate to the legislative body of the qualified local governmental unit.

If the application is determined to be incomplete, the clerk would notify the applicant in writing within 60 days of receiving the application, describing the deficiency and requesting additional information. The applicant then would have 60 days to correct the deficiency, with the ability to extend the period for up to 30 days upon a written agreement by the applicant and local government. The extension agreement would be completed in a manner and form prescribed by the STC. If the information is not provided by the end of this period, the application would be voided. The determination of the completeness of an application would not be considered an approval of the application.

Unless a public hearing has already been held on the establishment of the solar energy district, a public hearing on the application would be required before any action could be taken on it. Notice of the hearing would have to be given to the applicant, the assessor, a representative of each affected taxing unit, and the general public. Public notice would have to be posted on the qualified local governmental unit's website, if available, and in a location open to the public in the office of the qualified local governmental unit.

Not more than 120 days after the clerk receives an application, the legislative body of the qualified local governmental unit would be required to approve or disapprove of the application by resolution. In the case of an incomplete application, the 120-day period would be reset and tolled upon notification of the applicant by the clerk of the deficiency until all requested information is received by the local governmental unit.

Using a form prescribed by the STC, an applicant could transfer the application to another party if the legislative body of the local governmental unit has not yet taken any action on the application. If the application is transferred within 30 days of the 120-day window for action to be taken, the window is extended by 30 days.

If an application is approved, the clerk would forward a copy of the application, resolution, and the assessed and taxable value estimate referenced above to the STC within 60 days or before September 30 of that year, whichever is earlier, in order for the applicant to receive the certificate for the following year. If the application is disapproved, the resolution would have to state the reasons for disapproval and a copy of the resolution would be sent to the applicant, the assessor, and the STC. Within 14 days of the adoption of a disapproving resolution, the owner or lessee of the facility could request the legislative body of the local governmental unit reconsider the application by submitting information not included in the initial application. The legislative body would have to review the new information and approve or disapprove the request for reconsideration by resolution within 60 days of receiving the request.

Within 90 days after receiving a complete application and resolution approving an application, the STC would be required to approve the application if it determines that the facility complies with all requirements of the act. A facility placed in service after the date of application not be disqualified from approval by the local governmental unit or the STC.

Following an application's approval by the local governmental unit and the STC, the STC would issue a solar energy exemption certificate to the applicant that contains:

- The address of the real property on which the qualified facility is located.
- The time schedule for undertaking and completing the facility.
- A statement that, unless revoked, the certificate will remain in force for the period stated on the certificate.
- A statement of the estimated taxable value of the qualified facility for the tax year immediately preceding the certificate's effective date after deducting the taxable value of the land as determined under the bill.

The effective date of each certificate would be the December 31 immediately following its date of issuance.

The STC would be required to file a copy of the certificate with the clerk of the qualified local governmental unit and send a copy by certified mail to the applicant and the assessor of the local tax collecting unit in which the facility is located. The STC would also have to maintain a record of all certificates filed.

Solar energy facilities tax

A qualified facility with an effective certificate, but not the land on which it is located, would be exempt from ad valorem property taxes collected under the General Property Tax Act for the period on and after the effective date of the certificate and continuing for 20 years. The owner or lessee that claims an exemption under the act would have to file with the qualified local governmental unit an annual form, as prescribed by the STC, as of December 31 of each year indicating the nameplate capacity in alternating current of the qualified facility. The form would have to include the addition to the facility or retirement from the facility of any equipment during that year.

The assessor of each qualified local unit would annually determine the assessed value, taxable value, and nameplate capacity of each qualified facility separately.

The owner or lessee of a qualified facility with an effective certificate would be subject to the solar energy facilities tax, equal to $7,000 per megawatt of nameplate capacity, alternating current, as reported on the annual form filed with the local unit, subject to certain adjustments.

The tax would be reduced by $2,000 per megawatt of nameplate capacity if the qualified facility is located on one or more of the following:

- Property owned by the state either at the time of installation of the facility or immediately prior to the sale of the property to accommodate the installation of the facility.
- Property located in an opportunity zone designated by the United States Department of Treasury in April 2018 under the federal Tax Cuts and Jobs Act.
- Property that was used or is currently used for commercial or industrial purposes and that is a facility, historic resource, functionally obsolete, or blighted, as defined in the Brownfield Redevelopment Financing Act,[1] or a site or property as defined in section 21303 of the Natural Resources and Environmental Protection Act.[2]

[1] http://legislature.mi.gov/doc.aspx?mcl-125-2652
[2] http://legislature.mi.gov/doc.aspx?mcl-324-21303

- Improved real property used for another purpose if the qualified facility is attached to the improvement.

The tax would be reduced by 50% if the facility is a ***construction in progress***.

In addition, after the effective date of a certificate but prior to the start of construction in progress, the tax would be reduced by 100%.

> ***Construction in progress*** would mean a facility not yet placed in service but for which on-site delivery of any component described in the definition of ***qualified solar energy facility*** has been delivered to the site as of December 31 of that year. The term would not include land improvements or site preparation.

The solar energy facilities tax would be an annual tax that became a lien on July 1, payable at the same time and to the same officers as taxes imposed under the General Property Tax Act. Interest for any delinquent amounts paid after September 14 would be added at a rate of 1% per month or fraction of a month. Unless otherwise provided, the tax payments would be disbursed to and among the state, cities, school districts, townships, counties, villages, and authorities by December 1 using the tax rate levied in that year and in the same proportions as required for the disbursement of taxes collected on industrial personal property under the General Property Tax Act, as of the effective date of House Bill 4317. A copy of the amount of disbursement made to each unit would be sent to the Department of Treasury on a form provided by the department.

For intermediate school districts receiving state aid under section 56 or 62 of the State School Aid Act,[3] all or a portion of the specific tax that would otherwise be disbursed to the school district, to be determined on the basis of the tax rates being used to calculate the amount of state aid, would be paid to the state treasury and credited to the State School Aid Fund.

A qualified facility located in a renaissance zone under Michigan Renaissance Zone Act would be exempt from the solar energy facilities tax to the extent and duration provided under the Michigan Renaissance Zone Act, except for the portion of tax attributable to a special assessment or tax described in section 7ff(2) of the General Property Tax Act.[4] The tax collected under these circumstances would be disbursed proportionately to the taxing unit or units that levied a special assessment or tax as described in section 7ff(2) of the General Property Tax Act.

Revocation and reinstatement of a certificate

Upon receiving a request by certified mail from the holder of a certificate, the STC would be required to revoke by order the certificate for any of the following reasons:

- The facility has not yet been placed in service.
- The facility has permanently ceased operations.

[3] Section 56: http://legislature.mi.gov/doc.aspx?mcl-388-1656
Section 62: http://legislature.mi.gov/doc.aspx?mcl-388-1662
[4] http://legislature.mi.gov/doc.aspx?mcl-211-7ff

The legislative body of a qualified local governmental unit could, by resolution, request the STC to revoke the certificate of a qualified facility for any of the following reasons:

- The legislative body finds that completion of the qualified facility has not occurred within the time authorized by the legislative body in the certificate, an extension of that time has not been granted by resolution of the local government for good cause, and circumstances that are beyond the control of the certificate holder have not occurred.
- The solar energy facilities tax has not been paid within one year of the September 14 on which interest began accruing.
- The facility has permanently ceased operation.

Before the revocation of a certificate, the STC would be required to give notice in writing by certified mail to the holder of the certificate, the local legislative body, the assessor, and the legislative body of each local taxing unit that levies taxes on property in the local governmental unit in which the facility is located and afford them the opportunity for a hearing. If the reasons the local governmental unit requested revocation of the certificate have not been remedied, the STC would have to revoke the certificate by order.

An order revoking a certificate would be effective on the December 31 following the date of the order. A copy of the order would be sent to the holder of the certificate, the local legislative body, the assessor, and the legislative body of each local taxing unit that levies taxes upon property in the local governmental unit in which the facility is located. If a certificate is revoked for nonpayment of the solar energy facilities tax, the holder of the certificate would be required to repay all prior years of net tax savings under the certificate, as calculated by the STC, within 90 days. If not repaid, the net tax savings would be added to the next property tax bill for the qualified facility.

If, after the qualified facility is placed in service, the commission revokes a certificate for the cessation of commercial operations, the holder of the certificate would be subject to a one-time continuation payment based on the number of years remaining in the certificate's 20-year effective period. The payment would be calculated as the annual solar energy facilities tax payment multiplied by:

- 25% if 11 or more years remain on the certificate.
- 50% if between six and 11 years remain on the certificate.
- 75% if less than six years remain on the certificate.
- 0% if the 20-year period is complete, the cessation of operations is due to an act of God and the owner has no intent to resume operations, or the commission reinstates a revoked certificate as described below.

Notwithstanding any other provision of the new act, the STC would be required to reinstate a revoked certificate if all of the following conditions were met during the certificate's 20-year effective period:

- A written request for reinstatement is submitted to the legislative body of the qualified local governmental unit in which the qualified facility is located and the STC by either the holder of the revoked certificate or a subsequent owner of the qualified facility seeking transfer of the revoked certificate.
- The legislative body of the qualified local governmental unit submits to the STC a resolution of concurrence with the requested reinstatement.
- The qualified facility continues to qualify under the act.

Transfer of a certificate

Not later than 30 days after receiving a request to transfer a certificate, a qualified local governmental unit would have to approve the transfer of a certificate to a new owner or lessee of the qualified facility if all the following conditions are met:

- The new owner or lessee consents to the terms of the existing certificate and all provisions of the act.
- All taxes on the qualified facility have been paid.
- The qualified facility has not permanently ceased operations.
- In the case of a leased qualified facility, the lessee has provided a copy of the lease agreement or other writing confirming that they are liable for payment of the solar energy facilities tax for the remaining length of the certificate and proof of that liability.

The qualified local governmental unit would be required to notify the STC within 30 days of the approval of a transfer.

Statutory reports

Each qualified local governmental unit granting a certificate would have to report the status of each exemption to the Department of Treasury by June 15 annually. The report would have to include the current taxable value of the property to which the exemption pertains.

In addition, the Department of Treasury would have to annually submit a report on the utilization of the new act, based on information filed with the STC, to the House and Senate committees responsible for tax policy and economic development.

After the new act has been in effect for three years, the Department of Treasury would have to submit to the same legislative committees an economic analysis of the costs and benefits of the act in the three qualified local governmental units in which it was most heavily utilized.

Fee or bonding requirement

Qualified local governmental units could impose a fee or adopt a bonding requirement for a qualified facility as a condition to an exemption, if the purpose o the fee or bond is to provide for the removal of an abandoned or improperly maintained qualified facility, including a facility that the local government determines should be removed to protect health, safety, or welfare. This would only be allowed if the qualified facility was not otherwise subject to a decommissioning fee or removal bond under general zoning ordinances or land use permitting.

Sunset

New exemptions could not be granted after December 31, 2031. Exemptions in effect before that date would remain in effect until the expiration or revocation of the certificate.

The bills are tie-barred and would not take effect unless both are enacted.

HB 4318: MCL 211.9 et al.

BRIEF DISCUSSION:

Supporters of the bills argued that they will benefit both local communities and developers by providing uniformity and dependability in the taxation of solar projects. They held that

uncertainty and ambiguity under the current system of taxing the property under the personal property tax can lead to costly lawsuits between local governments and developers, and that the certainty of set tax payments also would make it easier for developers to plan projects in Michigan.

In addition, supporters contend that the bills would be important in incentivizing solar projects in Michigan and assisting in the state's transition away from fossil fuels.

Some committee testimony raised concerns about whether the tax amount of $7,000 per megawatt hour would be adequate to cover the lost revenue for local units. Supporters countered that the program would be optional for local governments, so they would not be required to enter into the PILT agreement if it would not be beneficial for their community.

Opponents of the legislation argued that because Michigan is forty-second in sunlight among the states, taxing the facilities based on nameplate capacity, rather than actual capacity generated, does not make sense. In addition, some contended that solar energy is not more environmentally friendly than fossil fuels.

FISCAL IMPACT:

As written, the bills would likely reduce revenue accruing to local units, although there is no way to determine the amount given the available data, and the creation of a solar energy district would be voluntary. Presumably, a qualified facility would only opt for the facilities tax if it was less than that the property tax liability that would exist under current law.

Any revenue generated from the facilities tax would be distributed to local units in the same proportion as the existing property tax, which suggests that if the facilities tax creates less of a liability than current law, local units would see a decline in revenues.

POSITIONS:

Representatives of the following entities testified in support of the bills (5-17-23):

- Consumers Energy
- DTE Energy
- Michigan Conservative Energy Forum
- Michigan Energy Innovation Business Council
- Michigan Chamber of Commerce

The following entities indicated support for the bills:

- Department of Treasury (5-17-23)
- American Clean Power Association (5-17-23)
- AES Clean Energy (5-17-23)
- Michigan League of Conservation Voters (5-17-23)
- Michigan Environmental Council (5-17-23)
- Clean Grid Alliance (5-17-23)
- National Grid Renewables (6-21-23)

- Michigan Snowsports Industries Association (6-21-23)

Representatives of the following entities testified as neutral on the bills (5-17-23):

- Michigan Townships Association
- Michigan Municipal League

Legislative Analyst: Alex Stegbauer
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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.