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BILL ANALYSIS

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House Bill 4317 (Substitute H-1 as passed by the House)
House Bill 4318 (as passed by the House)
Sponsor: Representative Curtis VanderWall (H.B. 4317)
Representative Cynthia Neeley (H.B. 4318)
House Committee: Tax Policy
Senate Committee: Energy and Environment

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INTRODUCTION

Taken together, the bills would exempt a qualified solar facility, generally a facility that can generate at least two megawatts of nameplate capacity (maximum rated output), from ad valorem property taxes collected under the General Property Tax Act. Instead, a qualified facility would have to pay annually the solar energy facilities tax, a payment in lieu of taxes equal to $7,000 per megawatt of nameplate capacity. House Bill 4317 (H-1) would establish the specific process for a facility to become qualified and receive the exemption; a local governmental unit could establish a solar district and the owner or lessee of a qualified facility not yet placed in service could apply for a solar energy exemption certificate. It also would provide for the revocation or transfer of a certificate and prohibit new exemptions after 2031.

PREVIOUS LEGISLATION

(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

House Bills 4317 and 4318 are reintroductions of Senate Bills 1106 and 1107 from the 2021-2022 Legislative Session. The Senate Committee on Energy and Technology held a hearing on the Senate Bills, but they received no further action.

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 (SET). However, most facilities likely are (or would be) exempt from the SET and local school operating mills under existing exemptions. The facilities tax they would have to pay under the bill would be distributed in the same proportion as the property taxes exempted.

Because the decision to create a solar energy district would be voluntary, a qualified facility likely would be responsible for a facilities tax that was less than the property taxes that otherwise would be owed for the facility. Assuming that to be the case, all affected taxing jurisdictions would receive less revenue than under current law. For any facilities that otherwise would not be exempt from the SET and local school operating mills, State revenue from the SET 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. The fiscal impact for any given jurisdiction would depend on the specific characteristics of the facility exempted, as well as the taxable value of the facility and local millage rates.

MCL 211.9 & 211.9f (H.B. 4318)

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CONTENT

House Bill 4317 (H-1) would enact the "Solar Energy Facilities Taxation Act" to do the following:

- **Allow for the establishment of solar energy districts in a qualified local governmental unit under specified circumstances.**
- **Require a legislative body, before adopting a resolution for the establishment of a solar energy district, to give written notice by mail to certain stakeholders and to set a public hearing on the establishment of the district.**
- **Allow an owner or lessee of a qualified facility not yet placed in service to file an application for a solar energy exemption certificate with the clerk of the qualified local governmental unit that had established a solar energy district.**
- **Require an application to include specified information, including a general description of the qualified facility and its proposed nameplate capacity.**
- **Require the legislative body of a qualified local governmental unit to approve or disapprove by resolution an application for a certificate within 120 days of receiving it, and if approved, require the legislative body's clerk to forward a copy of the application, resolution, and assessed taxable value to the State Tax Commission.**
- **Require the Commission to approve an application and resolution within 90 days of receiving them if they complied with the Act and to issue an applicant a certificate that contained specified information.**
- **Exempt a qualified facility for which a certificate was in effect from ad valorem property taxes collected under the General Property Tax Act for the effective period of the certificate and continuing for 20 years.**
- **Levy the solar energy facilities tax upon the owner or lessee of a qualified facility to which a certificate was in effect and specify that in each year after the facility was placed in service, the tax would be equal to $7,000 per megawatt of nameplate capacity, except as otherwise provided by the Act.**
- **Require the Commission to revoke a certificate under certain circumstances.**
- **Prescribe reporting requirements for each qualified local governmental unit granting a certificate and the Department of Treasury.**
- **Prohibit a new exemption from being granted under the Act after December 31, 2031, but allow exemptions then in effect to continue until the expiration or revocation of the certificate.**

House Bill 4318 would amend the General Property Tax Act to specify that a facility for which a solar energy facility exemption certificate had been issued, but not the land on which the facility was or would be located, would be exempt from taxation under the Act for the period beginning on the effective date of the certificate and continuing as long as the certificate was in force.

The bills are tie-barred.

House Bill 4317 (H-1)

Definitions

Under the proposed Act, "qualified solar energy facility" or "qualified facility" would mean a facility, whether owned or leased, that when constructed and 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 two 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 also 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. The term would not include any distribution or transmission lines.

"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 above has been delivered to the site as of December 31 of that year. The term would not include land improvements or site preparation.

"Solar energy district" or "district" would mean an area in a qualified local governmental unit established as provided in by the Act.

"Applicant" would mean an owner or lessee of a qualified facility. "Qualified local governmental unit" would mean a city, village, or township. "Unzoned qualified local governmental unit" would mean a qualified local governmental unit that has no zoning ordinance within its zoning jurisdiction.

"Taxable value" would mean the value determined under Section 27a of the General Property Tax Act.

Solar District Establishment

Under the proposed Act, one or more solar energy districts could be established in a qualified local governmental unit in any of the following ways:

-- By resolution of the legislative body of the qualified local governmental unit that had a zoning ordinance within its zoning jurisdiction, if the governmental unit complied with the requirements for doing so.
-- By the existence or establishment of a zoning ordinance designating the area within the qualified local governmental unit where the qualified facility could be located as a permitted or special use, in which case the resolution requirements would not apply.
-- All land within an unzoned qualified local governmental unit would be considered a solar energy district for the Act's purposes, unless the governmental unit, before receiving an application under the Act, established a solar energy district by resolution of its governing body; this action would not be subject to the resolution requirements described below.

The Act would allow a legislative body of a qualified local governmental unit to establish a solar energy district on its own initiative or upon a written request filed by the owner or owners of real property comprising more than 50% of all taxable value of the property located within the proposed district. The written request would have to be filed with the clerk of the qualified local governmental unit.

Before adopting a resolution establishing a district, the legislative body would have to notify, by certified mail, the legislative body of each taxing unit that levied ad valorem property taxes in the proposed district and the owners of all real property in the proposed district and would have to set a public hearing on the establishment of the district at which any of those owners, taxing units, and any other resident or taxpayer of the qualified local governmental unit could appear and be heard. The legislative body would have to give public notice of the hearing at least 10, but not more than 30, days before the date of the hearing. 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.

A qualified local governmental unit's approval or disapproval of a solar energy district within the Act would be discretionary and for solar energy facilities tax purposes only.

Solar Energy Exemption Certificate Application

Under the Act, after a district was established, 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. The application would have to be filed in the manner and form prescribed by the Commission and would have to contain or be accompanied by all the following:

-- A general description of the qualified 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 qualified facility.
-- A description of the general nature and extent of the new construction.
-- A time schedule for undertaking and completing the qualified facility.
-- Information relating to the provision of assessed and taxable value information to a qualified local governmental unit; all cost information regarding the claim for the exemption would have to be considered taxpayer confidential information and would not be subject to disclosure under the Freedom of Information Act.
-- The proposed location of the qualified facility.
-- For a leased qualified facility, a copy of the lease agreement or other writing confirming that the lessee was liable for payment of the specific tax for the length of the certificate as provided by the Act, and proof of that liability.
-- For a qualified facility on leased real property or an easement, a copy of the memorandum of lease or memorandum of easement, which would have to confirm that the duration of any lease of the real property where the qualified facility was located, including all options to extend the duration of the lease, was equal to or exceeded the duration of the certificate.

After receiving an application for a certificate, the clerk of the qualified local governmental unit would have to provide written notice of the application, in a form and manner prescribed by the Commission, to the assessor of the local tax collecting unit in which the qualified facility was located and the legislative body of each taxing unit that levied ad valorem property taxes in the qualified local governmental unit in which the qualified facility was located. Before acting on the application, unless a public hearing had been held, the legislative body of the qualified local governmental unit would have to hold a public hearing on the application and give public notice 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.

The Act would allow the qualified local governmental unit to charge the applicant an application fee to process an application for the certificate. Except as otherwise provided, the application fee could not exceed the actual cost incurred by the qualified local governmental unit in processing the application or $30,000, whichever was less.

After receiving notice that an application was filed, the assessor would have to estimate and furnish to the local legislative body of the qualified local governmental unit an estimate of the assessed value and the taxable value of the qualified facility not yet placed in service to which the application pertained.

The Act would allow an applicant to transfer an application filed under the Act, on a form prescribed by the Commission, to another party if the legislative body of the qualified local

governmental unit had not yet taken any action. If the applicant transferred the application within 30 days before the end of the 120-day tax period required as described below, the 120-day period would be extended by 30 days.

Application Approval or Denial

The legislative body of the qualified local governmental unit, within 120 days after the clerk received the application, either would have to approve or disapprove it by resolution. The clerk would have to retain the original of the application and resolution. If approved, the clerk would have to forward a copy of the application, the resolution, and the assessed and taxable value estimate required by the Act to the Commission within 60 days after approval or before September 30 of the year, whichever was first, so the applicant could receive the certificate for the following year.

If the application were determined incomplete, the clerk would have to notify the applicant in writing within 60 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 120-day period would be reset and tolled upon notification by the clerk of a deficiency until all the information requested in writing by the clerk was received by the qualified local governmental unit. The applicant would have 60 days to correct the deficiency, or the application would be void unless the applicant and the qualified local governmental unit agreed in writing to an extension of the period, not to exceed an additional 30 days. The extension agreement would have to be completed in a form and manner prescribed by the Commission.

If the application were disapproved, the reasons would have to be set forth in writing in the resolution, and the clerk would have to send, by certified mail, a copy of the resolution to the applicant, the assessor, and the Commission.

The Act specifies that resolution approving the application would not be effective unless approved by the Commission as described below.

Within 14 days after the adoption of a resolution disapproving the application, the owner or lessee could request the legislative body of the qualified local governmental unit to reconsider the application by submitting information not previously included in the application. Within 60 days after receiving the request for reconsideration, the legislative body of the qualified local governmental unit would have to review the new information and by resolution either approve or disapprove the request for reconsideration.

The actions by a qualified local governmental unit to approve or disapprove an application for a certificate would be discretionary and would be for solar energy facilities tax purposes only.

Commission Approval

Within 90 days after receiving a copy of a complete application and resolution approving the application, the Commission would have to approve the application if it determined that the qualified facility complied with the Act. Following approval of the application by the qualified local governmental unit and the Commission, the Commission would have to issue to the applicant a certificate in the form it determined, which would have to contain all the following:

-- The address of the real property on which the qualified facility was located.
-- The time schedule for undertaking and completing the qualified facility.
-- A statement that, unless revoked, the certificate would remain in force for the period stated in 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.

The Act specifies that the certificate's effective date would be the December 31 immediately following the date of its issuance. The Commission would have to file with the clerk of the qualified local governmental unit a copy of the certificate, and the Commission would have to maintain a record of all certificates filed. It also would have to send, by certified mail, a copy of the certificate to the applicant and the assessor of the local tax collecting unit in which the qualified facility was located.

Placement of a qualified facility in service after the date of application would not disqualify the facility from receiving approval by a qualified local governmental unit or by the Commission.

Tax Exemption and Reporting Requirements

Under the Act, a qualified facility for which a certificate was in effect, but not the land on which the qualified facility was located, for the period on and after the certificate's effective date and continuing for 20 years would be exempt from ad valorem property taxes collected under the General Property Tax Act.

An owner or lessee that claimed an exemption would have to provide to the qualified local governmental unit an annual form as of December 31 of each year indicating the nameplate capacity in alternating current of the qualified facility. The annual form would have to be filed in the manner and form prescribed by the Commission and 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 governmental unit in which there was a qualified facility with respect to which one or more certificates had been issued and were in force would have to determine annually as of December 31 the estimated or actual assessed value, taxable value, and nameplate capacity of each qualified facility separately.

Solar Energy Facilities Tax

The proposed Act would levy the solar energy facilities tax upon the owner or lessee of a qualified facility to which a certificate was in effect. Except as provided below, the amount of the solar energy facilities tax, in each year after the facility was placed in service, would be equal to $7,000 per megawatt of nameplate capacity, alternating current, as reported on the annual form required above.

The amount of the specific tax would have to be reduced to $2,000 per megawatt of nameplate capacity, alternating current as reported on the annual form, for a qualified facility located on one or more of the following:

-- Property owned by the State either at the time of installation of the qualified facility or immediately before a 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 Tax Cuts and Jobs Act of 2017.
-- Property previously or currently used for commercial or industrial purposes and that was a facility, historic resource, functionally obsolete, or blighted, as defined in the Brownfield Redevelopment Financing Act, or a site or property as defined in Section 21303 of the Natural Resources and Environmental Protection Act (NREPA).
-- Improved real property used for another purpose if the qualified facility were attached to the improvement.

In addition, for construction in progress, the specific tax prescribed above would have to be reduced by 50%. After the certificate's effective date, but prior to the commencement of construction in progress, the specific tax would have to be reduced by 100%.

(The Tax Cuts and Jobs Act of 2017 created opportunity zones in which low-income communities and certain contiguous communities qualify. According to the Internal Revenue Services, the Department of Treasury designated 289 opportunity zones in Michigan in 2018, and these zones allow for investors to defer tax on capital gains if they invest those gains in a qualified development.

Section 21303 of NREPA defines "site" as a location where a release has occurred or a threat of release exists from an underground storage tank system, excluding any location where corrective action was completed that satisfied certain requirements. In addition, Section 21303 defines "property" as real estate that is contaminated by a release from an underground storage tank system.)

The Act specifies that the solar energy facilities tax would be an annual tax that would become a lien on July 1, payable at the same time and to the same officer or officers as taxes imposed under the General Property Tax Act were payable. Interest would have to be added to delinquent amounts paid after September 14 at a rate of 1% per month or fraction of a month. Except as otherwise provided, the officer or officers would have to disburse the specific tax payments received by the officer or officers each year to and among the State, cities, school districts, townships, counties, villages, and authorities by December 1 using the tax rates levied in that year in the same proportions as required by law for the disbursement of taxes collected on industrial personal property under the General Property Tax Act.

For intermediate school districts receiving State aid under the State School Aid Act, of the amount of the specific tax that otherwise would be disbursed to an intermediate school district, all or a portion, to be determined on the basis of the tax rates being used to compute the amount of State aid, would have to be paid to the State Treasury to the credit of the State School Aid Fund.

The Act would require the officer or officers to send a copy of the amount of disbursement made to each unit to the Department of Treasury on a form provided by the Department.

A qualified facility located in a renaissance zone under the Michigan Renaissance Zone Act would be exempt from the specific tax levied under the proposed Act to the extent and for the duration provided under the Michigan Renaissance Zone Act, except for that portion of the specific tax attributable to a special assessment or a tax described in Section 7ff(2) of the General Property Tax Act. The specific tax calculated would have to be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in Section 7ff(2).

(Section 7ff(2) of the Michigan Renaissance Zone Act concerns the following special assessments and taxes:1) a special assessment levied by the local tax collecting unit in which the property is located; 2) ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors or obligations pledging the unlimited taxing power of the local governmental unit; and 3) certain taxes levied under the Revised School Code.)

Certificate Revocation

Under the proposed Act, after receiving a request by the holder of a certificate requesting revocation of the certificate, the Commission would have to revoke the certificate if the facility had not yet been placed in service or had permanently ceased operation.

In addition, the legislative body of the qualified local governmental unit could request by resolution that the Commission revoke the certificate of a qualified facility for any of the following reasons:

-- The legislative body found that completion of the qualified facility had not occurred within the time authorized by the legislative body in the certificate, an extension of that time had not been granted by resolution of the qualified local governmental unit for good cause, and circumstances that were beyond the control of the holder of the certificate had not occurred.
-- The solar energy facilities tax had not been paid within one year of September 14.
-- The qualified facility had permanently ceased commercial operation.

Before the revocation or receipt of a resolution for revocation, the Commission would have to notify, by first class mail, the holder of the certificate, the local legislative body, the assessor, and the legislative body of each local taxing unit that levied taxes upon property in the local governmental unit in which the qualified facility was located. The Commission would have to afford those entities an opportunity for a hearing. If the reasons prescribed for revocation had not been remedied, the Commission would have to consider the resolution and revoke the certificate.

The Commission's order to revoke a certificate would be effective on the December 31 following the date of the order, and the Commission would have to send, by certified mail, copies of its order of revocation to the aforementioned entities. If the Commission revoked a certificate for nonpayment of the solar energy facilities tax, the holder of the certificate would have to repay all the prior years' net tax savings under the certificate, calculated by the Commission by subtracting the specific tax paid from the amount of property tax that would have been levied on the qualified facility if the certificate had not been in effect based on the value determined under the Act, within 90 days of the revocation. If not repaid, the prior years' net tax savings would have to be added to the qualified facility's next property tax bill.

Reinstatement of a Revoked Certificate

Under the Act, notwithstanding any other provision, the Commission would have to reinstate a revoked certificate if all the following conditions were met during the 20-year period that a facility was exempt from ad valorem taxes:

-- A written request for reinstatement was submitted to the legislative body of the qualified local governmental unit in which the qualified facility was located and the Commission by either the holder of the revoked certificate or a subsequent owner of the facility seeking transfer of the revoked certificate.
-- The legislative body of the qualified local governmental unit submitted to the Commission a resolution of concurrence in the requested reinstatement.
-- The qualified facility continued to qualify under the Act.

If the Commission revoked a certificate after a qualified facility was placed in service because the facility has ceased operations permanently, the holder of the would be subject to a one-time continuation payment based on the number of years remaining on the 20-year period. The Commission would have to calculate the payment as the product of the number of years remaining, thew annual solar energy facilities tax required under the Act, and an applicable percentage. The percentage would have equal one of the of the following:

-- If 11 or more years remained, 25%.
-- If six or more years and fewer than 11 years remained, 50%.
-- If the 20-year period were not complete and fewer than six years of it remained, 75%.
-- If the 20-year period were complete, the cessation of operations were due to an act of God and the owner had no intent to resume operations, or the Commission reinstated a revoked certificate, 0%.

Transfer of a Certificate

Within 30 days after a qualified local governmental unit received a request to transfer a certificate, the qualified local governmental unit would have to approve the transfer from the holder of the certificate and assign the certificate to a new owner or lessee of the qualified facility if all the following conditions were met:

-- The new owner or lessee consented to the terms of the existing certificate and all provisions of this act.
-- All taxes on the qualified facility had been paid.
-- The qualified facility had not permanently ceased commercial operation.
-- In the case of a leased qualified facility, the lessee provided a copy of the lease agreement or other writing confirming that the lessee was liable for payment of the specific tax for the remaining length of the certificate and proof of that liability.
-- A qualified local governmental unit would have to notify the Commission of a transfer within 30 days after approval of the transfer.

Reporting Requirements

Under the Act, by June 15 each year, each qualified local governmental unit granting a certificate would have to report to the Department of Treasury on the status of each exemption. The report would have to include the current taxable value of the property to which the exemption pertained.

Each year, the Department would have to prepare and submit to the committees of the House of Representatives and Senate responsible for tax policy and economic development issues a report on the use of the Act, based on the information filed with the Commission. After the Act had been in effect for three years, the Department would have to prepare and submit to those same committees an economic analysis of the costs and benefits of the Act in the three qualified local governmental units in which it had been most heavily used.

Bonding Requirement

The Act would allow a qualified local governmental unit, as a condition to a tax exemption under the Act, to impose a fee or adopt a bonding requirement for a qualified facility if the purpose of the fee or bond were to provide for the removal of an abandoned or improperly maintained qualified facility, including a facility that a qualified local governmental unit determined should be removed to protect public health, safety, or welfare. However, a qualified local governmental unit could impose a fee or adopt a bonding requirement for a qualified facility only if the qualified facility were not otherwise subject to a decommissioning fee or removal bond under general zoning ordinances or land use permitting.

Sunset

The Act would prohibit a new exemption from being granted under the Act after December 31, 2031, but the Act specifies that an exemption then in effect would continue until the expiration or revocation of the certificate.

House Bill 4318

The bill would amend the General Property Tax Act to specify that a facility for which a solar energy facility exemption certificate had been issued as prescribed by House Bill 4317 (H-1), but not the land on which the facility was or would be located, would be exempt from taxation under the Act for the period beginning on the effective date of the certificate and continuing as long as the certificate was in force.

In addition, the bill would modify the definition of "new personal property" to specify that, for exemptions subject to resolutions adopted for the purpose of providing a tax exemption under the Act after December 31, 2023, new personal property would not include a qualified solar energy facility as defined in House Bill 4317 (H-1).

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