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BILL



ANALYSIS

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Senate Bill 539 (as enrolled)
Sponsor: Senator Dave Honigman
Senate Committee: Local, Urban and State Affairs
House Committee: Urban Policy

Date Completed: 6-22-95

RATIONALE

In an effort to address urban and rural redevelopment of distressed areas, Congress authorized the Federal designation of nine empowerment zones (six urban and three rural) and 95 enterprise communities (65 urban and 30 rural) in the Omnibus Budget Reconciliation Act of 1993. Congress also provided \$2.5 billion in tax incentives to employers in zones, and \$1 billion in grants to the zones and communities. Areas seeking designation had to apply by June 30, 1994, and meet criteria concerning population, distress, area, size, and poverty. To be considered for designation, an area had to be jointly nominated by the local government and the state in which it was located, as well as submit a strategic plan by the local government and the state.

A number of Michigan communities submitted applications for Federal designation. In December 1994, Detroit was selected to receive designation as an empowerment zone, and Flint, Muskegon/Muskegon Heights, and Lake County received enterprise community designations. As a result, Detroit will receive \$100 million, and each of the three enterprise communities will receive \$2.9 million, in Federal grants over two years. It has been suggested that the State enact legislation providing for local governing bodies to oversee the implementation of a designated area's strategic plan.

CONTENT

The bill would create the "Enterprise Community Development Corporation Act" to provide for the establishment of an enterprise community development corporation on behalf of a municipality. Among other things, a corporation would be responsible for coordinating, monitoring, and evaluating the

programs of the agencies implementing the strategic plan agreed to by the State and the municipality concerning an enterprise community, and could modify the strategic plan under certain circumstances. The bill also would provide for the board of directors of a corporation, and a corporation's dissolution.

Incorporation

At least three people could make a written application to the governing body of a municipality with a population of less than 900,000 for permission to incorporate an enterprise community development corporation on behalf of the municipality. ("Municipality" would mean a county, city, village, or township.) The application would have to include proposed articles of incorporation and proposed bylaws. The process for approving and amending the articles and bylaws would have to be prescribed by an ordinance of the municipality.

After a public hearing, the application could be approved by the governing body's adoption of a resolution. The governing body would have to give notice of the time and place of the hearing by publication once in a newspaper of general circulation designated by the municipality at least 10 days before the date set for the hearing. Notice also would have to be posted at least 10 days before the hearing in at least 10 conspicuous and public places within the designated enterprise community.

If the governing body approved both the application to incorporate and the articles of incorporation, the clerk of the municipality would have to file the original of the articles with the Department of Commerce and one copy in his or her office. The corporation would be incorporated

at the time the articles were filed with the Department. The validity of the incorporation would be conclusively presumed unless challenged in court within 60 days after the incorporation.

A municipality could not approve the incorporation of more than one corporation under the proposed Act.

Board of Directors

The size and composition of the board of directors of an enterprise community development corporation would have to be determined by an ordinance of the municipality. An elected official or candidate for elective office could not serve as a board member. With the approval of the municipality's governing body, the chief elected officer of the municipality would have to appoint the members of the board. The chief executive officer could remove a director for cause as prescribed by a municipal ordinance. ("Chief executive officer" would mean the mayor or city manager of a city; the president of a village; the supervisor of a township; or the county executive of a county or, if a county did not have a county executive, the chairperson of the county board of commissioners.)

The qualifications and mechanisms for the selection of the board members, the filling of vacancies, and the number of members would have to be prescribed by municipal ordinance. The board would have to establish an executive committee to manage the corporation, and could establish neighborhood review panels and necessary subcommittees to monitor the implementation of programs detailed in the strategic plan. The size and manner of selecting the committee and panel members and the number of members would have to be prescribed by ordinance. The board, all committees, and the neighborhood review panels would have to reflect the demographic diversity of the enterprise community.

Members of the board of directors would have to be appointed for staggered terms as prescribed by ordinance. A director whose term of office had expired would continue to hold office until the chief executive officer appointed the director's successor, with the approval of the municipality's governing body. A director would serve without compensation, but could be reimbursed for the actual expenses incurred in the performance of his or her official duties.

A director who had either a direct or an indirect interest in a matter before the corporation would have to disclose that interest before the corporation took action on the matter. This disclosure would have to be made a part of the record of the corporation's official proceedings and the interested director would have to refrain from participation in the corporation relating to the matter.

Corporate Powers and Duties

An enterprise community development corporation would have to employ an executive director and other necessary staff. The corporation would have the power and duty to coordinate, review, recommend prioritization of, monitor, and evaluate the programs of the agencies implementing the strategic plan to ensure the achievement of benchmarks and timetables as detailed in that plan. ("Strategic plan" would mean a plan agreed to by this State and a municipality concerning an enterprise community that included both of the following: certification of the authority to adopt a strategic plan in an application for nomination as an enterprise community under applicable Federal regulations, and a written commitment of the State and the municipality to adhere to the plan.)

The corporation also would have the powers and duties to do all of the following:

- Solicit and accept gifts, donations, in-kind services, grants, loans, appropriations, or other money from a Federal, State, local, or private source for operating expenses.
- Acquire, hold, lease, or dispose of real or personal property necessary or convenient to accomplish the purposes of the proposed Act.
- Procure the director's bond and liability insurance that were prescribed by municipal ordinance.
- Submit to the chief executive officer and the governing body of the municipality periodic progress, financial, and performance reviews, and other reports considered necessary by the chief executive officer and the governing body. The municipality would have to make these reports available to the public upon request.
- With the concurrence of the municipality by its governing body and chief executive officer, modify the strategic plan, except as precluded by Federal, State, or local law.

In addition, the corporation would possess all other powers necessary and appropriate that were not inconsistent with Federal, State, or local law to coordinate, review, recommend prioritization of, monitor, and evaluate the programs of the agencies implementing the strategic plan as detailed in that plan. The municipality could assign by ordinance additional powers and duties to the extent not prohibited by law.

Dissolution

A corporation that completed its duties of coordinating, monitoring, and evaluating the programs of the agencies implementing the strategic plan would have to be dissolved by the adoption of a resolution by a majority of two-thirds of the board members. A majority of the members of the municipality's governing body would have to approve the resolution. After approval, the clerk of the municipality would have to file a copy of the resolution with the Department of Commerce.

Net assets of the corporation that exceeded the amount necessary to retire indebtedness or to complete the corporation's coordinating and evaluating duties would inure to the benefit of the municipality, and not to another person or entity. Upon the corporation's dissolution, title to all corporate real and personal property would vest in the municipality, and possession of all corporate money would be transferred to the municipality exclusively for charitable or public purposes.

Additional Municipal Authority

The chief executive officer of a municipality could impose sanctions upon an enterprise community development corporation based on periodic performance reviews as prescribed by an ordinance of the municipality and with the approval of the municipality's governing body.

In order to accomplish the purposes of the proposed Act, a municipality could institute and prosecute proceedings under its powers of eminent domain in accordance with State law or local charter. The municipality's taking and transfer of public and private property for use in a project set forth in a strategic plan could be on terms and conditions that the municipality considered appropriate and would have to be considered necessary for the benefit of the public.

The bill specifies that the authority given by the proposed Act would be in addition to and not in

derogation of the power of a municipality existing under statutory or charter provisions.

Legislative Finding/Construction of Act

The bill contains the following statement: "There exists in this state the continuing need for programs to alleviate and prevent conditions of long-term unemployment, economic distress, and accompanying social ills. Accordingly, the legislature finds that in order to stimulate the creation of new jobs and to promote the revitalization of distressed areas, it is necessary to empower municipalities to create enterprise community development corporations to facilitate the implementation of municipalities' strategic plans aimed toward those ends, and to ensure local oversight of strategic plan implementation."

The bill specifies that the proposed Act would have to be liberally construed to effectuate its purposes.

BACKGROUND

Public Act 311 of 1994 amended the Enterprise Zone Act to permit a local unit of government to qualify for an enterprise zone if it has been Federally designated an empowerment zone or enterprise community. (Previously, the Act's eligibility criteria had applied only to Benton Harbor.) If an enterprise zone is approved by the Enterprise Zone Authority, businesses located within the zone may be certified to receive property tax exemptions for five years, and owners of tax-exempt property are subject to a specific annual tax that is approximately 50% of the amount of the property tax.

Public Act 75 of 1995 enacted the Empowerment Zone Development Corporation Act to provide for the establishment of an empowerment zone development corporation. The provisions of that Act generally parallel those of Senate Bill 539.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Having been designated as enterprise communities, Flint, Muskegon/Muskegon Heights, and Lake County have the opportunity to make use of a substantial grant of Federal dollars to revitalize certain depressed areas. According to a

spokesperson for the Michigan Jobs Commission, these communities already are moving forward in implementing their strategic plans. Under the bill, each local unit could choose to create a separate corporation--directed by a demographically diverse, nonpolitical board--to coordinate and oversee the implementation of its strategic plan, and report to the municipality's governing body and chief executive officer.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: R. Ross

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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.