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SFA**BILL ANALYSIS**

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Senate Bill 1316 (Substitute H-2 as passed by the Senate)

Senate Bill 1317 (Substitute S-3 as reported)

Senate Bill 1321 (Substitute S-3 as reported)

Senate Bill 1322 (as enrolled)

House Bills 6071 and 6074 (as enrolled)

Sponsor: Senator Bev Hammerstrom (S.B. 1316)
Senator Valde Garcia (S.B. 1317)
Senator Alan Sanborn (S.B. 1321)
Senator Joanne G. Emmons (S.B. 1322)
Representative Gene DeRossett (H.B. 6071)
Representative Randy Richardville (H.B. 6074)

Senate Committee: Finance

House Committee: Energy and Technology

Date Completed: 7-31-02

RATIONALE

In his 2002 State of the State Message, Governor Engler stressed the importance of developing renewable sources of energy. He said: "It is no longer a question of whether, but when, we will leave behind an economy powered by fossil fuels." In particular, he mentioned the development of fuel cells as a technology that "...will revolutionize power generation", and quoted recent statements by the CEOs of General Motors and Ford that indicated their belief that fuel cells would one day replace the internal combustion engine as the major source of power for transportation. The Governor further stated that it cannot be assumed that Michigan will maintain its dominant place in the auto industry, and that the State must develop a strategy to prepare for the transformation of the auto industry, and society in general, from fossil fuel dependence to alternative energy sources.

In April, the Governor presented an economic development plan referred to as "NextEnergy", designed to promote the research, development, commercialization, and manufacture of alternative energy technologies, such as hydrogen fuel cells, through a combination of tax credits and oversight by a new authority. Many people agree with the Governor's concept and believe that it should be put into statute.

CONTENT

The bills would amend various statutes and create a new act to establish an alternative energy zone on State-owned land near Ann Arbor (House Bill 6071); create an authority to oversee the zone and an alternative energy technology park (Senate Bill 1316 (H-2)); and provide exemptions and credits for certain alternative energy systems and businesses against personal property taxes (House Bill 6074), the single business tax (Senate Bill 1322), the sales tax (Senate Bill 1321 (S-3)), and the use tax (Senate Bill 1317 (S-3)).

House Bill 6071

The bill would amend the Michigan Renaissance Zone Act to allow the Michigan Strategic Fund board to designate one renaissance zone as an alternative energy zone. The alternative energy zone would have to promote and increase the research, development, and manufacturing of alternative energy technology. The alternative energy zone would have a duration of renaissance zone status for not more than 20 years as determined by the board.

(Under the Act, as amended by Public Act 98 of 1999, the board may designate up to five

renaissance zones, in addition to those otherwise permitted, in cities, villages, or townships that consent to the creation of a zone within their boundaries. The alternative energy zone designated under the bill would have to be one of those five.)

The bill provides that property located in the alternative energy zone that was classified as commercial real property under the General Property Tax Act, and that the proposed Michigan Next Energy Authority, with the concurrence of the assessor of the local tax collecting unit, determined was not used to promote and increase directly the research, development, and manufacturing of alternative energy technology, would not be eligible for any exemption, deduction, or credit under the Michigan Renaissance Zone Act. (Under the Act, within an area designated as a renaissance zone, businesses and residents are eligible for certain tax exemptions and credits, including an exemption from property taxes, the State income tax, and the single business tax.)

Senate Bill 1316 (H-2)

Overview

The bill would create the "Michigan Next Energy Authority Act" and the Michigan Next Energy Authority, which could do the following:

- Oversee an alternative energy technology park and an alternative energy zone on land that received renaissance zone status.
- Create and operate a center to manage and develop a master plan for land located within the alternative energy zone, and to exercise other duties.
- Finance and aid in the construction of alternative energy technology businesses and infrastructures located within the zone and park.
- Acquire, construct, and improve an alternative energy technology project, including land, buildings, equipment, and various types of facilities for alternative energy technology.
- Issue bonds and notes.

The bill also would do the following:

- Transfer to the Authority four parcels of State-owned land in Washtenaw County,

totaling approximately 724 acres.

- Allow the Authority to convey or lease the transferred land for value, as determined by the Authority.
- Allow the Authority to convey, sell, lease, or otherwise dispose of its real or personal property to any public or private person for public purposes.
- Create the "Michigan Alternative Energy Technology Fund".
- Require the Authority to certify the eligibility of certain alternative energy systems, products, and business entities for personal property tax exemptions, and single business tax credits (as proposed by House Bill 6074 and Senate Bill 1322).
- Require the State to reimburse intermediate school districts for all tax revenues lost on property previously subject to property taxes, as a result of the personal property tax exemption.

Authority & Board

The Michigan Next Energy Authority would be created as a "public body corporate and politic" within the Department of Management and Budget. The Authority would exercise its statutory functions independently of the Department Director, although its budgeting, procurement, and related administrative functions would have to be performed under the Director's direction. The accounts of the Authority could be subject to annual financial audits by the State Auditor General.

The Authority would be governed by board of seven members appointed by the Governor who were residents of Michigan: one member representing the government of the county (Washtenaw County) containing land that would be transferred to the Authority under the bill; one member representing the government of a city or township in which land transferred to the Authority was located; and five other members, one of whom would have to have at least 10 years' experience in planning or real estate development. The members appointed by the Governor to represent the county and the city/township would have to be selected from a list submitted by the county board of commissioners, and the legislative body of the city or township.

After the initial appointments (for terms described in the bill), members would serve four-year terms, and could be reappointed. The Governor would have to designate one member to serve as the chairperson. Board members would have to serve without compensation but would be reimbursed for actual and necessary expenses. The board would be subject to the Open Meetings Act and the Freedom of Information Act. The board could act only by resolution.

A member of the board or an officer, appointee, or employee of the Authority would not be subject to personal liability when acting in good faith within the scope of his or her authority or on account of liability of the Authority. The board could indemnify a board member or an Authority officer, appointee, or employee against liability arising out of the discharge of his or her official duties.

The board would have to establish policies and procedures requiring periodic disclosure of relationships that could give rise to conflicts of interest. The board also would have to require that a member having a direct or indirect interest in any matter before the Authority disclose his or her interest and any reasons known to the member why the transaction might not be in the best interest of the public, before the board took any action with respect to the matter. A board member who had an interest in a contract before the Authority could not take part in the negotiation or approval of the contract.

Chief Executive

The board could appoint a person, other than a board member, to serve as the chief executive of the Authority, to whom the Authority could delegate any of its administrative powers and authorization. The chief executive would be an ex officio member of the board, without a vote. During employment, he or she could not have a financial interest in facilities or projects over which the Authority had jurisdiction or power to act.

Subject to the board's approval, the chief executive would have to supervise, and be responsible for, all of the following:

- The performance of the functions of the Authority.

- A regular report describing the Authority's activities and financial condition.
- The issuance of bonds and notes approved by the board.
- The negotiation and establishment of compensation and terms of employment for Authority employees.
- The negotiation, supervision, and enforcement of contracts entered into by the Authority and the supervision of contractors and subcontractors of the Authority.

If the board considered it necessary, the chief executive could appoint a chief financial officer, who would be the treasurer of the Authority. Both the chief executive and the chief financial officer would have to be residents of Michigan.

Authority Powers & Duties

The Authority would have the power to do the following:

- Manage and oversee an alternative energy technology park (the property transferred to the Authority under the bill) and an alternative energy zone on land owned by the Authority, and receive designation of renaissance zone status for the alternative energy zone.
- Finance, direct, or otherwise aid in the planning, construction, and design of alternative energy technology businesses and infrastructure located within an alternative energy zone and an alternative energy technology park.
- Design, construct, acquire, operate, lease, sell, and convey planned sites within an alternative energy zone and an alternative energy technology park, subject to restrictions in the bill.

The Authority also could construct, acquire, and improve or equip a project or any part of a project, and could borrow money and issue bonds and notes to finance part or all of the project costs of a project, and secure those bonds and notes by mortgage, assignment, or pledge of any of the Authority's money, revenue, income, and property. ("Project" would mean an alternative energy technology project, as well as the acquisition, construction, conversion, conveyance, or leasing of land or facilities inside the alternative energy technology park to carry

out the purposes of the proposed Act and of the Authority, including acquisition of land or interest in land, buildings, structures, or other improvements to land inside the alternative energy technology park, machinery, equipment, or furnishings, including the following facilities for alternative energy technology: offices, engineering facilities, research and development laboratories, manufacturing facilities, warehouses, parts distribution facilities, storage facilities, testing facilities, facilities supporting alternative technology projects, and equipment or facilities designed to produce energy from renewable resources. "Alternative energy technology" would mean equipment, component parts, materials, electronic devices, testing equipment, and related systems that were solely related to the storage or generation of hydrogen for use in an alternative energy system; the process of generating and putting into a usable form the energy generated by an alternative energy system; or a microgrid (the lines, wires, and controls to connect two or more alternative energy systems. Alternative energy technology would not include those component parts of an alternative energy system that were required regardless of the energy source.)

The Authority also could do the following:

- Research and publish studies, investigations, surveys, and findings on the development and use of alternative energy technology.
- Make grants, loans, and investments; guarantee and insure loans, leases, bonds, notes, or other indebtedness; and issue letters of credit.
- Impose and collect fees and charges in connection with any transaction.
- Enter into a lease for the use or sale of a project.
- Mortgage or create security interests in a project, in a lease or loan, or in the revenue to be paid under a lease or loan, in favor of the holders of the bonds or notes issued by the Authority.
- Convey or release a project to a lessee, purchaser, or borrower after provision had been made for the retirement of the bonds or notes issued for that project.

The Authority could purchase real property or rights or interests in real property for any

purpose it considered necessary, including facilitating the assembly of property for sale or lease to any other public or private person, for use consistent with the purposes of the proposed Act. The bill would forbid the Authority from acquiring, owning, leasing, purchasing, developing, or possessing an interest in real property located outside the alternative energy technology park, or personal property not intended to be used in the park.

With respect to property held or owned by it, the Authority could develop a land use master plan consistent with the purposes of the proposed Act that was in reasonably accord with the master zoning plan of the local unit of government where the property was located.

The Authority could control, maintain, operate, repair, lease as lessor, prevent the waste or deterioration of, demolish, and take all other actions necessary to preserve the value of property it held inside the alternative energy technology park. The Authority would have exclusive jurisdiction over all property it held, and could take or perform the following with respect to property it held or owned: grant or acquire a license, easement, or option with respect to property as the Authority determined was reasonably necessary to achieve the purposes of the bill; fix, charge, and collect rents, fees, and charges for use of property under its control; pay any tax or special assessment due on property it acquired or owned; and take any action, provide any notice, or institute any proceeding required to clear or quiet title to property it held, in order to establish ownership by and vest title to property in the Authority.

The bill specifies that, in the exercise of its powers and duties under the proposed Act, and its powers relating to property held or owned by the Authority, the Authority would have complete control as fully as if it represented a private property owner, and would not be subject to restrictions imposed by any charter, ordinances, or resolutions of a local unit of government; however, this provision could not be construed to prohibit a local unit from enforcing its local police and fire protection ordinances.

The bill provides that the Authority would be encouraged not to purchase foreign goods and/or services, if competitively priced and

comparable quality American goods and/or services were available. The Authority would have to encourage all business entities that located or operated in the park to purchase American goods and/or services. The Authority also would have to encourage and support the creation and retention of jobs in Michigan, and the manufacture, assembly, and construction of alternative energy marine propulsion systems, alternative energy systems, and alternative energy vehicles, in Michigan.

The Authority could not operate an alternative energy technology business or otherwise engage in the manufacture of any commercial products. (An "alternative energy technology business" would be a business engaged solely in the research, development, or manufacture of alternative energy technology.)

Authority Tax Exemption Certification

The bill would require the Authority to certify the following personal property, and provide proof of the certification to the assessor of the local tax collecting unit: alternative energy marine propulsion systems, alternative energy systems, and alternative energy vehicles, as well as tangible personal property of a business that was not an alternative energy technology business, that was used solely for the purpose of researching, developing, and manufacturing an alternative energy technology. To be certified, the personal property could not have been previously subject to taxation under the General Property Tax Act, or previously exempt from property taxes except for personal property exempted under House Bill 6074, and business inventory (which is currently exempt from property taxes). (Under House Bill 6074, property would have to be certified by the Authority in order to be tax exempt.)

The Senate bill also would require the Authority to certify, and provide proof of certification of, an alternative energy technology business; and an eligible taxpayer for purposes of claiming the credit under the Single Business Tax Act (as proposed in Senate Bill 1322) for qualified business activity. Further, the Authority would have to certify and provide proof of certification of the qualified business activity.

Authority Bonds & Notes

The Authority could authorize and issue its bonds or notes payable solely from revenues or funds available to the Authority. Bonds and notes of the Authority would not be a debt or liability of the State, would not create or constitute any indebtedness, liability, or obligations of the State, and would not constitute a pledge of the faith or credit of the State. Bonds and notes issued by Authority would not be subject to the Revised Municipal Finance Act, but would be subject to the Agency Financing Reporting Act.

Authority bonds and notes would not be a general obligation of the Authority but would be payable solely from the revenues and/or funds pledged to the payment of the principal of and interest on the bonds or notes, as provided in the resolution authorizing them. The bonds or notes could be issued as either tax-exempt or taxable for Federal income tax purposes.

Alternative Energy Technology Fund

The Fund would be created under the jurisdiction and control of the Authority, and could be administered for the general obligations of the Authority and to secure any notes and bonds of the Authority. The Authority could receive money or other assets from any source for deposit into the Fund, and could spend money from the Fund only for the purposes provided in the bill.

The Authority would have to deposit into the Fund all money it received from the sale, transfer, or lease of property. The Authority also would have to credit to the Fund the proceeds of the sale of notes or bonds to the extent provided for in the authorizing resolution, and any other money made available to the Authority for the purposes of the Fund.

Land Transfer & Property Conveyance

The bill would transfer to the Authority, without consideration, four parcels of State-owned land located in York Township, Washtenaw County, containing approximately 342, 302, 53, and 26.88 acres, respectively. These parcels would be subject to any easements, rights-of-way, or restrictions existing at the time of transfer.

When the transfer to the Authority was completed, the Authority, on behalf of the State and for the purposes of the Authority, could convey for value (as described below), or could convey a leasehold in, any portion or all of the parcels. Any reuse or development of the property conveyed or leased would have to be done by the Authority in conformance with a plan developed by it. The Authority could enter into an agreement with a State university, a local unit of government, a governmental agency, or a nonprofit corporation to create this plan or develop the property conveyed.

The Authority would have to determine value based on the property's highest and best use in accordance with the plan and the purposes of the Authority. On terms and conditions, and for consideration the Authority considered proper, fair, and valuable (including no monetary consideration), the Authority could convey, sell, transfer, exchange, lease, or otherwise dispose of property or rights or interests in property in which the Authority held a legal interest, to any public or private person for the specific purpose of fulfilling the proposed Act. Consideration received from any conveyance of the Authority's real or personal property would have to be deposited in the Alternative Energy Technology Fund. The Authority would have to obtain an appraisal of the property.

Any conveyance would have to require that the property be used for public purposes or to further the public purposes of the proposed Act, as determined by the Authority. The conveyance would have to provide that, upon termination of that use, the Authority could reenter and repossess the property, terminating the grantee's estate in it. In addition, the conveyance would have to require that any subsequent conveyance by the grantee or the grantee's successors also be subject to these "exclusive use" and right of reentry and possession provisions.

A conveyance would have to be by quitclaim deed approved by the Attorney General, and convey all rights held by the State to coal, oil, gas, and other minerals found on or under the property.

Except as otherwise provided in the proposed Act, or as the Authority otherwise agreed, the Authority could retain any proceeds received by it for the purposes of the Act.

Definitions

The bill contains definitions pertaining to alternative energy systems and vehicles, as described below.

Alternative Energy System. The bill would define "alternative energy system" as the small-scale generation or release of energy from one or any combination of the following types of energy systems: fuel cell, photovoltaic, solar-thermal, wind, CHP, microturbine, miniturbine, stirling cycle, battery cell, or clean fuel and electricity storage. "Small-scale" would mean a single energy system with a generating capacity of two megawatts or less, or an integrated energy system with a generating capacity of 10 megawatts or less.

A "full cell energy system" would be one of more fuel cells or fuel cell stacks (an assembly of fuel cells) and an inverter or other power conditioning unit. A "fuel cell" would be an electromechanical device that used an external fuel and continuously converted the energy released from the oxidation of fuel by oxygen directly into electricity without combustion and consisted of an anode, a cathode, and an electrolyte. A fuel cell energy system could include a fuel cell processor, that is, a device that converted a fuel, including methanol, natural gas, or gasoline, into a hydrogen rich gas, without combustion for use in a fuel cell.

A "photovoltaic energy system" would be a solar energy device composed of one or more photovoltaic cells or photovoltaic modules (an assembly of photovoltaic cells) and an inverter or other power conditioning unit. A "photovoltaic cell" would be an integrated device consisting of layers of semiconductor materials and electrical contacts capable of converting incident light directly into electricity. A photovoltaic system could include batteries for power storage or an electricity storage device.

A "clean fuel energy system" would be a device that was designed and used solely for the purpose of generating power from a clean fuel. It would not include a conventional gasoline or diesel fuel engine or a retrofitted conventional diesel or gasoline engine. "Clean fuel" would mean methane, natural gas, methanol neat or methanol blends containing at least 85% methanol, denatured ethanol neat or ethanol blends containing at least 85% ethanol, compressed or liquefied natural gas,

liquefied petroleum gas, or hydrogen.

A "solar-thermal energy system" would be an integrated unit consisting of a sunlight collection device, a system containing a heat transfer fluid to receive the collected sunlight, and heat exchangers to transfer the solar energy to a thermal storage tank to heat or cool spaces or water or to generate electricity. "Wind energy system" would mean an integrated unit consisting of a wind turbine composed of a rotor, an electrical generator, a control system, an inverter or other power conditioning unit, and a tower, which used moving air to produce power.

A "CHP energy system" would be an integrated unit that generated power and either cooled, heated, or controlled humidity in buildings or provided heating, drying, or chilling for an industrial process, including and limited to both of the following: 1) an absorption chiller, a desiccant dehumidifier, or heat recovery equipment; and 2) a fuel cell energy system or an internal combustion engine, an external combustion engine, microturbine, or miniturbine fueled solely by a clean fuel.

A "microturbine" or "miniturbine energy system" would be a system that generated electricity, composed of a compressor, combustor, turbine, and generator, fueled solely by a clean fuel with a maximum capacity of 250 kilowatts (for a microturbine) or two megawatts (for a miniturbine). A miniturbine system could include a recuperator and an alternator. A microturbine energy system could include an alternator, and would have to include a recuperator if it increased the efficiency of the energy system.

A "stirling cycle energy system" would be a closed-cycle regenerative heat engine that was fueled solely by a clean fuel, and that used an external combustion process, heat exchangers, pistons, a regenerator, and a confined working gas, such as hydrogen or helium, to convert heat into mechanical energy. A stirling cycle energy system could include a generator to generate electricity.

A "battery cell energy system" would be one or more battery cells and an inverter or other power conditioning unit used to propel a motor vehicle or an alternative energy marine propulsion system; provide electricity that was distributed within a dwelling or other

structure; and/or provide electricity to operate a portable electronic device, including a laptop computer, a personal digital assistant, or a cell phone. "Battery cell" would mean a closed electrochemical system that converted chemical energy from oxidation and reduction reactions directly into electric energy without combustion and without external fuel, and consisted of an anode, a cathode, and an electrolyte.

An "alternative energy marine propulsion system" would be an onboard propulsion system or detachable outboard propulsion system for a watercraft that was powered by a fuel cell energy system, photovoltaic energy system, or advanced battery cell energy system, and that was the singular propulsion system for the watercraft. It would not include battery powered motors designed to assist in the propulsion of the watercraft during fishing or other recreational use.

Alternative Energy Vehicle. An alternative energy vehicle would be a motor vehicle propelled by an alternative energy system, manufactured by an original equipment manufacturer that fully warranted and certified that the motor vehicle met Federal motor vehicle safety standards for its class of vehicles as defined by the Michigan Vehicle Code, and certified that the motor vehicle met local emissions standards. An alternative energy vehicle would include the following:

- An alternative fueled vehicle (a motor vehicle powered solely by a clean fuel energy system and fueled solely by a clean fuel).
- A fuel cell vehicle (a motor vehicle powered solely by a fuel cell energy system).
- An electric vehicle (a motor vehicle powered solely by a battery cell energy system).
- A hybrid vehicle (a motor vehicle that could only be powered by two or more alternative energy systems).
- A solar vehicle (a motor vehicle powered solely by a photovoltaic energy system).
- A hybrid electric vehicle (a vehicle powered by an integrated propulsion system consisting of an electric motor and combustion engine). A hybrid electric vehicle would not include a retrofitted conventional diesel or gasoline engine. It would have to obtain the power necessary to propel the vehicle from a combustion

engine and a battery cell energy system; a fuel cell energy system; or a photovoltaic energy system.

Senate Bill 1317 (S-3)

The bill would amend the Use Tax Act to exempt from the tax the storage, use, or consumption of an alternative energy system, alternative energy marine propulsion system, or alternative energy vehicle certified for exemption by the Michigan Next Energy Authority. The exemption would apply to taxes levied after September 30, 2003, and before September 30, 2008. The exemption would not apply to the storage, use, or consumption of a battery cell energy system.

Senate Bill 1321 (S-3)

The bill would amend the General Sales Tax Act to exempt from the tax sales of an alternative energy system, alternative energy marine propulsion system, or alternative energy vehicle certified for exemption by the Michigan Next Energy Authority. The exemption would apply to taxes levied after September 30, 2003, and before September 30, 2008. The exemption would not apply to the sales of a battery cell energy system.

Senate Bill 1322

Overview

The bill would amend the Single Business Tax Act to allow a taxpayer, for tax years beginning after 2002, to claim a credit against the single business tax (SBT) for certain qualified business activity if certified under the proposed Michigan Next Energy Authority Act; and/or claim a credit for qualified payroll if the taxpayer were located in an alternative energy zone (as designated by the Michigan Strategic Fund board).

The bill also would repeal the SBT Act for tax years that begin after 2009; and increase the filing threshold from \$250,000 to \$350,000 for tax years that begin after 2002. (A taxpayer whose gross receipts were less than \$350,000 for a tax year would not have to file a return or pay the tax.)

Qualified Business Activity Credit

The bill provides that a taxpayer that was an

eligible taxpayer could claim a nonrefundable credit for a tax year. An "eligible taxpayer" would be a taxpayer that had proof of certification of qualified business activity under the proposed Michigan Next Energy Authority Act. "Qualified business activity" would be research, development, or manufacturing of an alternative energy marine propulsion system, an alternative energy system, an alternative energy vehicle or alternative energy technology (as defined in the proposed Act) or renewable fuel. ("Renewable fuel" would mean biodiesel or biodiesel blends containing at least 20% biodiesel, or biomass. "Biodiesel" would mean a diesel fuel substitute consisting of methyl or ethyl esters produced from the transesterification of animal or vegetable fats with methanol or ethanol. "Biomass" would mean residues from the wood and paper products industries, residues from food production and processing, trees and grasses grown specifically to be used as energy crops, and gaseous fuels produced from solid biomass, animal wastes, municipal waste, or landfills.)

The credit for a tax year would be equal to the amount by which the taxpayer's SBT liability attributable to qualified business activity for the tax year exceeded the taxpayer's baseline tax liability attributable to qualified business activity. (The baseline tax liability would be determined by a formula specified in the bill that would measure a taxpayer's tax liability for the 2001 tax year, based on property value and payroll for qualified business activity of the taxpayer outside a renaissance zone, compared with all of the taxpayer's property value and payroll for qualified business activity in the State.) An eligible taxpayer could not claim the credit for any tax year in which the taxpayer's SBT liability attributable to qualified business activity did not exceed the taxpayer's baseline tax liability attributable to qualified business activity. An affiliated group, a controlled group of corporations, or an entity under common control could not take the credit unless the qualified business activity of the group or entities was consolidated.

A taxpayer that claimed the credit would have to attach to the annual return a copy, as issued under the proposed Michigan Next Energy Authority Act, of proof of certification of each of the following: that the taxpayer was an eligible taxpayer for the tax year; the

taxpayer's SBT liability attributable to qualified business activity for the tax year; and the taxpayer's baseline tax liability attributable to qualified business activity.

Qualified Payroll Credit

The bill provides that a taxpayer that was a qualified alternative energy entity could claim a refundable credit for the taxpayer's qualified payroll amount. A "qualified alternative energy entity" would be a taxpayer located in an alternative energy zone. A "qualified payroll amount" would be an amount equal to payroll of the qualified alternative energy entity attributable to all of its qualified employees in the tax year for which the credit was being claimed, multiplied by the income tax rate for that tax year. A "qualified employee" would be an individual who was employed by a qualified alternative energy entity, whose job responsibilities were related to the research, development, or manufacturing activities of the entity, and whose regular place of employment was within an alternative energy zone.

If the credit exceeded the taxpayer's SBT liability for a tax year, the portion of the credit that exceeded the tax liability would have to be refunded. A taxpayer would have to claim the credit after all allowable nonrefundable credits were claimed under the SBT Act.

House Bill 6074

The bill would amend the General Property Tax Act to exempt from personal property taxes alternative energy personal property, if certified by the Michigan Next Energy Authority as eligible for the exemption, and if the local school district and local tax collecting unit did not disapprove the exemption. The exemption would apply to taxes levied after December 31, 2002, and before January 1, 2013.

Under the bill, alternative energy personal property would include an alternative energy system; an alternative energy vehicle; all personal property of an alternative energy technology business; and the personal property of a business that was not an alternative energy technology business that was used solely for the purpose of researching, developing, or manufacturing an alternative energy technology.

The bill provides that if the Authority certified alternative energy property as eligible for exemption from the tax, the Authority would have to forward a copy of the certification to the secretary of the local school district, and the treasurer of the local tax collecting unit, in which the personal property was located. Within 60 days after receiving the certification, the local school district board, with the written concurrence of the district superintendent, could adopt a resolution not to exempt the alternative energy personal property from a tax levied in the school district under Section 1212 of the Revised School Code (which allows a school district to levy up to 5 mills for up to 20 years for a sinking fund to acquire building sites and for construction or repair of school buildings); or a tax levied under the Code to retire outstanding bonded indebtedness. If a resolution were adopted, a copy would have to be forwarded to the Authority, to the treasurer of the local tax collecting unit, and to the State Treasurer. If a resolution were not adopted, the alternative energy personal property would be exempt from a tax levied in the local school district under Section 1212, or levied to retire outstanding bonded indebtedness.

Also, within 60 days after receiving the Authority's certification, the governing body of the local tax collecting unit in which the property was located could adopt a resolution not to exempt the alternative energy personal property from the taxes collected in the local unit, except taxes collected for school operating purposes; taxes levied under Section 1212 of the Revised School Code; a tax levied under the Code to retire outstanding bonded indebtedness; or the State education tax. The clerk of the local unit would have to give written notice to the assessor of the local unit in which the alternative energy personal property was located, and the legislative body of each taxing unit that levied property taxes in that local unit. Notice of a meeting at which the resolution would be considered would have to be provided as required under the Open Meetings Act. Before acting on the resolution, the governing body of the local tax collecting unit would have to give the assessor and a representative of the affected taxing units an opportunity for a hearing. If a resolution were adopted, a copy would have to be forwarded to the Authority and to the State Treasurer. If a resolution were not adopted, the personal property would be exempt from the taxes

collected in that local tax collecting unit.

MCL 125.2688a (H.B. 6071)
Proposed MCL 205.94w (S.B. 1317)
Proposed MCL 205.54aa (S.B. 1321)
Proposed MCL 208.39e (S.B. 1322)
Proposed MCL 211.9i (H.B. 6074)

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

Many people would agree that dependence on oil, gas, and other fossil fuels for the production of usable power, to run vehicles and machines and to heat or cool structures, is problematic in that these resources are finite and will one day become scarce. Further, many would agree that the burning of these fuels over a period of time has polluted the air, increased the "greenhouse" effect on the atmosphere, and caused a number of other environmental problems. Though opinions vary widely concerning the length of time existing resources will last and the degree of environmental damage to date, given the widespread belief that increased use of nonrenewable fuels is unwise, and perhaps damaging, many individuals, private concerns, and governments have spent many years and millions of dollars searching for and researching alternative energy sources. While the development of alternative energy technologies has advanced, none of these energy sources has replaced traditional power production on a mass scale. Nevertheless, some believe that the conversion from fossil fuel dependence to alternative energy sources may be near.

In his State of the State Message this year, the Governor cited fuel cells as an innovative technology that is attracting much attention and investment, and pointed out the interest of automobile manufacturers in developing vehicles powered by fuel cells instead of internal combustion engines. If Michigan, the traditional center of the country's auto industry, is left out as a location for the development of new power systems for vehicles, a great number of jobs, and vital economic activity, would be put at risk. (The Governor estimated 200,000 jobs and a \$10 billion economic loss to the State.) Therefore, the Governor proposed a comprehensive economic development plan to foster

research, development, and manufacturing of alternative energy technologies, including fuel cells, in Michigan. The bills would advance the Governor's proposal, by creating a special alternative energy technology park near Ann Arbor for alternative energy technology businesses, and creating special tax exemptions and incentives to encourage such businesses to locate in the park.

Supporting Argument

A fuel cell is a device that consists of an anode, cathode, and electrolyte, and operates by converting chemical energy into electrical energy. Unlike batteries, fuel cells do not run down and do not require recharging, but do require fuel. When hydrogen is used as the fuel, reportedly the only byproduct from the conversion to electricity is water, and because a fuel cell has no moving parts, this method of producing energy is clean and efficient. While an individual fuel cell produces a small amount of electricity, cells may be stacked to produce greater, usable outputs. Because hydrogen appears to be the most abundant element in the universe, some people view its use in fuel cells as a solution to the need to reduce pollution, and dependence on fossil fuels.

Despite the benefits displayed by fuel cells and the promise of virtually unlimited clean power production, there are technological barriers to their development that must be overcome. Several industries, particularly automotive manufacturers, are researching, testing, and attempting to develop fuel cells that can be mass-produced and generate power that is useful and affordable. The bills would encourage those industries to locate their efforts in Michigan, so that the State remains a production center for automobiles, and is well-positioned when other alternative energy systems are developed and produced.

Opposing Argument

The bills offer another opportunity for the State to pick winners and losers in the private sector, by giving special tax breaks to certain portions of certain industries. Under Senate Bill 1316 (H-2), the Authority would have to certify the eligibility of alternative energy systems, products, and business entities for various tax exemptions and credits, meaning that an entity created by the State would choose which businesses and which products would receive tax breaks. Some do not consider this to be a legitimate function of government. Instead of creating a structure designed to pick favorites, the State should

direct its efforts toward improving the business climate for all industries, thus encouraging overall economic growth.

Legislative Analyst: George Towne

FISCAL IMPACT

These bills would have a direct identifiable negative fiscal impact on State government, schools, and local governments totaling an estimated \$5.8 million in FY 2002-03 and \$12.1 million in FY 2003-04. The major components of this fiscal impact are summarized below and in the following table.

Alternative Energy Zone - H.B. 6071 (as enrolled). This bill would not expand the number of renaissance zones, but would allow one of the existing authorized renaissance zones to be an alternative energy zone. Therefore, the bill would have no fiscal impact compared with current law.

Michigan Next Energy Authority - S.B. 1316 (H-2 as passed by the Senate).

The Michigan Next Energy Authority would be charged with the development and marketing of alternative energy technology for the State of Michigan. The bill would transfer State-owned land to the Authority for this purpose. The Authority could sell or lease this land to generate revenues that would fund the development of infrastructure, such as water and sewer facilities, and property management functions. The source of initial revenue for infrastructure development is unknown. It could come from partnerships with local agencies or existing grant programs, such as Federal Community Development Block Grants (CDBG). The Authority also would have bonding authorization. Any debt obligations of the Next Energy Authority would not be general obligations of the State nor would the Authority benefit from the full faith and credit of the State.

The bill would transfer to the Authority four parcels of State-owned land totaling nearly 724 acres from the site of the former Ypsilanti State psychiatric hospital. This action would result in the loss of a potentially valuable asset that the State currently owns. The Senate Fiscal Agency is unaware of a current appraisal of the four parcels that might indicate their value. However, given the location and the amount of land available, the estimated potential value transferred to the Authority is in the millions of dollars.

The Authority would have minimal operating expenses that would be funded from the

revenues received by the Technology Fund created in the bill. The members of the board of directors of the Authority would not receive compensation other than travel and meeting expenses. The bill would allow the appointment of an executive director and staff, who would be contract employees of the State. The compensation of the employees would be determined by the executive director and approved by the board.

The Authority also would be charged with certifying alternative energy property for purposes of the property tax exemptions authorized in H.B. 6074. Certification, by itself, would not have a fiscal impact on either the State or local units. The impact of the property tax exemption, as well as certain issues related to apparent conflicts between the certification provisions and the exemption language in H.B. 6074, are described in the fiscal impact for that bill.

The Senate bill also would require the reimbursement of intermediate school districts for property tax revenue lost from property previously subject to tax that received an exemption under H.B. 6074. Certification would affect only new property and despite unclear language in the House bill, the apparent intent (and Department of Treasury interpretation) is to exempt new property only. As a result, there should be no revenue loss to require reimbursement and the provision would have no fiscal impact on the State or local units.

Single Business Tax Credits - S.B. 1322 (as enrolled). It is estimated that the proposed refundable payroll tax credit would have no fiscal impact in FY 2002-03, but would reduce single business tax revenue an estimated \$0.2 million in FY 2003-04. It is estimated that the proposed nonrefundable business activity tax credit would reduce revenue an estimated \$0.2 million in FY 2002-03 and FY 2003-04. The loss in revenue from both of these credits would affect the State's General Fund/General Purpose budget.

Personal Property Tax Exemption - H.B. 6074 (as enrolled). The proposed personal property tax exemption would reduce property taxes as follows: State education property tax revenue would be reduced an estimated \$0.6 million in FY 2002-03 and \$1.2 million in FY 2003-04; the local school district 18-mill tax revenue would be reduced \$1.7 million in FY 2002-03 and \$3.5 million in FY 2003-04; intermediate school district property taxes would be reduced \$0.3 million in FY 2002-03 and \$0.6 million in FY 2003-04, and all other local

government property taxes would be reduced an estimated \$3.0 million in FY 2002-03 and \$6.3 million in FY 2003-04. The loss in State education property tax revenue would affect the School Aid Fund and the loss in local school district 18-mill tax revenue would automatically increase School Aid Fund expenditures by the same amount. As a result, this bill would have a negative fiscal impact on the School Aid Fund of an estimated \$2.3 million in FY 2002-03 and \$4.7 million in FY 2003-04. These estimates assume that local governments and schools would grant this personal property tax exemption.

The bill contains language about what property is supposed to be eligible for the exemption. The definitions of property in the bill are not completely consistent with the definitions of property the Authority would be required to certify in S.B. 1316 (H-2). The House bill discusses certified property as eligible for the credit but none of the language in the certification sections of S.B. 1316 (H-2) discusses eligibility for a credit. The first

section of the House bill appears to exempt all property, both existing and new, while certification would affect only new. Similarly, the exemptions granted in the bill (and local units' ability to opt out of an exemption) are not always consistent with the taxes that could be the subject of local units' resolutions. The apparent intent, which the fiscal impact reflects, is to exempt only new property, to have property definitions consistent with S.B. 1316 (H-2), and to allow property to be exempt from a maximum of all local mills and the State Education Property Tax mills.

Sales and Use Tax Exemptions - S.B. 1317 (S-3) & S.B. 1321 (S-3). It is estimated that these bills would have a minimal negative impact on sales and use tax collections in FY 2003-04, but would potentially have a much larger negative impact in future years.

ESTIMATED FISCAL IMPACTS OF NEXT ENERGY BILLS		
(dollars in millions)		
Item	FY 2002-03	FY 2003-04
<u>Single Business Tax Credits (SB 1322):</u>		
Payroll Credit	\$0.0	(\$0.2)
Business Activity Credit	(0.2)	(0.2)
Subtotal SBT Credits	(\$0.2)	(\$0.4)
<u>Personal Property Exemption (HB 6074):</u>		
State Education Property Tax	(\$0.6)	(\$1.2)
Local School 18-Mill Tax	(1.7)	(3.5)
ISD Property Tax	(0.3)	(0.6)
Local Governments	(3.0)	(6.3)
Subtotal Personal Prop Tax Exemption	(\$5.6)	(\$11.7)
<u>State Reimbursement to:</u>		
Local School Districts	\$1.7	\$3.5
Subtotal State Reimbursements	\$1.7	\$3.5
<u>Distribution of Fiscal Impact:</u>		
State General Fund	(\$0.2)	(\$0.4)
School Aid Fund	(2.3)	(4.7)
Local School Districts	0.0	0.0
Intermediate School Districts	(0.3)	(0.6)
Local Governments	(3.0)	(6.3)
Total Fiscal Impact	(\$5.8)	(\$12.1)
Note: Not included in above estimates are the sales and use tax exemptions, which would go into effect in FY 2003-04. These exemptions would have a very minimal impact in FY 2003-04.		

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