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**SFA****BILL ANALYSIS**

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Senate Bill 1316 (as introduced 5-9-02)  
Sponsor: Senator Bev Hammerstrom  
Committee: Finance

Date Completed: 5-21-02

## **CONTENT**

**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 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.**
- **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.**
- **Enter into an interlocal agreement with a university, governmental agency, or local unit of government providing for the joint exercise of powers.**

**The bill also would do the following:**

- **Transfer to the Authority four parcels of State-owned land in Washtenaw County, totaling approximately 817 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".**

(Related legislation includes Senate Bills 1315 and 1317 through 1322. An individual COMMITTEE SUMMARY is available for each of these bills.)

### 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 who were residents of Michigan. The following members would have to be appointed by the Governor representing economic development interests in the State:

- One member representing a State university governed by a control board under Article VIII, Section 5 of the State Constitution, located in a county containing land that would be transferred to the Authority under the bill (i.e., the University of Michigan).
- One member representing the government of that county (Washtenaw County).
- One member representing the government of a city or township in which land transferred to the Authority was located.

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 could establish policies and procedures requiring periodic disclosure of relationships that could give rise to conflicts of interest. The board also could 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.

#### Authority Powers & Duties

The Authority would have the power to do the following:

- Manage and oversee 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.
- Design, construct, acquire, operate, lease, sell, and convey planned sites within an alternative energy zone, subject to restrictions in the bill.

(Senate Bill 1315 would amend the Michigan Renaissance Zone Act to allow the board of the Michigan Strategic Fund to designate one renaissance zone as an alternative energy zone, for up to 20 years.)

Further, the Authority could create and operate centers, accounts, and funds as required or permitted by law for the use, management, and disbursement of real or personal property or other assets of the Authority. (The bill would define "center" as a separate legal entity created to manage, develop, and create a master plan for land located within an alternative energy zone and to exercise other duties considered necessary by the Authority to fulfill the purposes of the proposed Act.)

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 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, 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.)

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.

("Alternative energy technology" and "alternative energy technology business" would mean those terms as defined in the General Property Tax Act, which Senate Bill 1320 would amend to exempt alternative energy property from taxation.)

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.

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 and the governing body of a State university, a governmental agency, or a local unit of government could enter into an interlocal agreement under the Urban Cooperation Act providing for the joint exercise of powers granted to the Authority, including those related to the acceptance and management of real property. The Authority also could transfer property to a public body corporate created by an interlocal agreement.

The bill specifies that, in the exercise of its powers and duties under the proposed Act, and its powers relating to property held 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 other law, charter, ordinances, or resolutions of a local unit of government.

#### 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 (proposed by Senate Bill 1201).

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.

If the Fund were exhausted at any time, the Authority would have to certify to the Governor, by September 1, the amount necessary to restore the Fund to an amount equal to the payment of principal and interest of notes and bonds, for the purchase redemption of the notes or bonds, or for the payment of a redemption premium required to be paid when the notes or bonds were redeemed before maturity. The Governor would have to include this amount in his or her annual budget message.

#### 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 450, 300, 40, 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 purpose of promoting economic development and 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 plan would have to create potential uses for the

property that furthered the economic goals for the State, including an alternative energy technology research and development park, an alternative energy technology manufacturing park, mixed-use office complexes, and related infrastructure.

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.

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 successor(s) 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.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

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 817 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 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 bill would establish a Michigan Alternative Energy Technology Fund to be administered by the Next Energy Authority for the purposes of general operations and for securing notes and bonds of the Authority. If at any time the Fund were exhausted, the Authority would be required to certify to the Governor the amount necessary to pay the principal and interest on any notes or bonds. The Governor would be required to include this amount in the annual proposed budget. The actual appropriation would depend on the legislative appropriation process. This appropriation would be from the General Fund.

Fiscal Analyst: Michael Hansen

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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.