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BILL ANALYSIS

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House Bill 5766 (Substitute S-1 as passed by the Senate)

Sponsor: Representative Janet Kukuk

House Committee: Economic Development

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 6-22-00

RATIONALE

In a 1999 report entitled, "State Smart: Michigan: A Plan for Accelerating the Growth of Technology-Based Jobs", Governor John Engler announced a plan to stimulate the growth of technology-based jobs in Michigan, noting that the overriding goal of the State's economic development effort has been to attract well-paying jobs that have a solid long-term future. Many of these jobs are considered to be "gold collar" jobs, which employ highly skilled individuals, pay high wages, and are in great demand. According to the "State Smart: Michigan" report, developed by the Michigan Economic Development Corporation (MEDC), gold collar jobs often are found in the advanced manufacturing, information technology, and life science sectors of the economy. To accelerate the growth of these sectors in Michigan, the plan proposed the development of a network of Michigan certified technology parks, or "smart parks", which would be similar to industrial parks and would use tax increment financing to develop the infrastructure and services.

It has been suggested that certified technology parks be provided for in statute. The Local Development Financing Act was enacted in 1986 to enable local governments to "capture" revenue from millage levied on increased property values within the boundaries of an authority, and to invest the revenue in public facilities, or infrastructure, for the property. The amount of revenue captured is based on the increase in property values over the initial assessed value of the property at the time of the authority's creation. The Act allows the capture of property taxes only from selected types of property, which are currently limited to property devoted to manufacturing and agricultural processing activities. As a rule, the Act also restricts the use of taxes captured from eligible property to public facilities for that property. Some people believe that the Act should be amended to accommodate certified technology parks, and permit the use of tax increment financing to support the development of high-technology activities.

CONTENT

The bill would amend the Local Development Financing Act to allow a municipality (city, village, or urban township) with a local development finance authority to apply to the Michigan Economic Development Corporation for designation of all or part of the authority as a "certified technology park". To receive this designation, the applicant would have to satisfy at least one of various criteria, such as support from a public institution of higher education or private research-based institute, development of a business incubator, or development of property devoted to high technology activity.

Upon the MEDC's approval of an application, an authority and a municipality that incorporated the authority could enter into an agreement with the MEDC establishing the terms and conditions governing the certified technology park. An agreement could not be made after December 31, 2002.

The bill would allow the MEDC to designate up to 10 certified technology parks; and would revise the capture of tax increment revenues with respect to certified technology parks.

The bill also would permit a municipality to join with one or more municipalities located within the same county to establish a local development finance authority that could exercise its powers only in a certified technology park. (This would be in addition to the single authority that a municipality may establish under the Act.)

The bill is tie-barred to House Bill 5443, which would amend the Michigan Economic Growth Authority (MEGA) Act to allow that Authority to execute a number of new agreements for tax credits, including agreements regarding qualified high technology businesses.

Certified Technology Park Criteria

A municipality that had created a local development finance authority could apply to the Michigan Economic Development Corporation for designation of all or a portion of the authority district as a certified technology park and to enter into an agreement governing the terms and conditions for the designation. The application would have to be in a form specified by the MEDC and would have to include information the MEDC determined necessary to make the determination required under this provision.

After receiving an application, the MEDC could designate, pursuant to an agreement entered into under the bill, a certified technology park that was determined by the MEDC to satisfy one or more of the following criteria based on the application:

- A demonstration of significant support from an institution of higher education or a private research-based institute located within the proximity of the proposed certified technology park, as evidenced by the following types of support: grants of preferences for access to and commercialization of intellectual property; access to laboratory and other facilities owned by or under control of the higher education institution or private research-based institute; donations of services; access to telecommunication facilities and other infrastructure; financial commitments; access to faculty, staff, and students; and, opportunities for adjunct faculty and other types of staff arrangements or affiliations.
- A demonstration of a significant commitment on behalf of the institution of higher education or private research-based institute to the commercialization of research produced at the certified technology park, as evidenced by the intellectual property and, if applicable, tenure policies that rewarded faculty and staff for commercialization and collaboration with private businesses.
- A demonstration that the proposed certified technology park would be developed to take advantage of the unique characteristics and specialties offered by the public and private resources available in the area in which the proposed certified technology park would be located.
- The existence of or proposed development of a business incubator within the proposed certified technology park that exhibited the following types of resources and organization: significant financial and other types of support from the public or private resources in the area in which the proposed certified technology park would be located; a business plan exhibiting the economic

utilization and availability of resources and a likelihood of successful development of technologies and research into viable business enterprises; and, a commitment to the employment of a qualified full-time manager to supervise the development and operation of the business incubator.

- The existence of a business plan for the proposed certified technology park that identified its objectives in a clearly focused and measurable fashion and that addressed the following matters: a commitment to new business formation; the clustering of businesses, technology, and research; the opportunity for and costs of development of properties under common ownership or control; the availability of and method proposed for development of infrastructure and other improvements, including telecommunications technology, necessary for the development of the proposed certified technology park; and, assumptions of costs and revenues related to the development of the proposed certified technology park.
- A demonstrable and satisfactory assurance that the proposed certified technology park could be developed principally to contain eligible property whose primary purpose was or would be a high technology activity or a business incubator.

The bill would define "high technology activity" as it is defined in the MEGA Act. (Under House Bill 5443, the term would mean advanced computing, advanced materials, biotechnology, electronic device technology, engineering or laboratory testing of product development, environmental technology, medical device technology, product research and development, and advanced vehicle technology.) "Business incubator" would mean real and personal property that met all of the following requirements: was located in a certified technology park; was subject to an agreement under the bill (described below); and was developed for the primary purpose of attracting one or more owners or tenants who would engage in activities that each would separately qualify the property as eligible property with the primary purpose and use of high technology activity.

Certified Technology Park Agreement

A local development financing authority and a municipality that incorporated the authority could enter into an agreement with the MEDC establishing the terms and conditions governing the certified technology park. Upon designation of the technology park pursuant to the terms of the agreement, the subsequent failure of any party to comply with the terms of agreement could not result in the termination or rescission of the designation of the area as a certified technology park.

The agreement would have to include at least all of the following provisions:

- A description of the area to be included within the certified technology park.
- Covenants and restrictions, if any, on all or a portion of the properties contained within the certified technology park and terms of enforcement of any covenants or restrictions.
- The financial commitments of any party to the agreement and of any owner or developer of property within the certified technology park.
- The terms of any commitment required from an institution of higher education or private research-based institute for support of the operations and activities at eligible properties within the certified technology park.
- The terms of enforcement of the agreement, which could include the definition of events of default, cure periods, legal and equitable remedies and rights, and penalties and damages, actual or liquidated, upon the occurrence of an event of default.
- The public facilities to be developed for the certified technology park.
- The costs approved for public facilities under the Act.

If the MEDC had determined that a sale price or rental value at below market rate would assist in increasing employment or private investment in the certified technology park, the authority and municipality could determine the sale price or rental value for public facilities owned or developed by the authority and municipality in the certified technology park at below market rate.

If public facilities developed pursuant to an agreement entered into under the bill were conveyed or leased at less than fair market value or at below market rates, the terms of the conveyance or lease would have to include legal and equitable remedies and rights to assure the public facilities were used as eligible property. Legal and equitable remedies and rights could include penalties and actual or liquidated damages.

An agreement designating a certified technology park could not be made after December 31, 2002, but any agreement made on or before December 31, 2002, could be amended after that date.

The MEDC would have to market the certified technology parks and the certified business parks. The MEDC and an authority could contract with each other or any third party for these marketing services.

The MEDC could not designate more than 10 certified technology parks. Not more than seven of them could not include a firm commitment from at

least one business engaged in a high technology activity creating a significant number of jobs. The MEDC would have to give priority to applications that included new business activity.

Establishment of Joint Authority

Currently, a municipality may establish not more than one local development finance authority under the Act. An authority is required to exercise its powers in all authority districts. The bill specifies that in addition to an authority established under this provision, a municipality could join with one or more other municipalities located within the same county to establish an authority under the Act. An authority created under this provision could exercise its powers only in a certified technology park designated in an agreement made under the bill. A municipality could not establish more than one authority under this provision.

The Act permits the governing body of a municipality to declare by resolution adopted by a majority of its members its intention to create and provide for the operation of an authority. In the resolution of intent, the governing body must set a date for holding a public hearing on the adoption of a proposed resolution creating the authority and designating the boundaries of the authority district(s). Notice of the public hearing must be published in a newspaper of general circulation and mailed to property taxpayers in a proposed authority district and to the governing body of each taxing jurisdiction levying taxes that would be subject to capture.

The bill specifies that except as otherwise provided, if two or more municipalities desired to establish an authority that would exercise its powers in a certified technology park, each municipality in which the authority district would be located would have to comply with the procedures prescribed in the Act. The notice required under the Act could be published jointly by the municipalities establishing the authority. The resolutions establishing the authority would have to include, or would have to approve an agreement including, provisions governing the number of members on the board, the method of appointment, the members to be represented by governmental units or agencies, the terms of initial and subsequent appointments to the board, the manner in which a board member could be removed for cause before his or her term expired, the manner in which the authority could be dissolved, and the disposition of assets upon dissolution.

An authority under this provision would not be considered established unless all of the following conditions were satisfied: a resolution was approved and filed with the Secretary of State by each municipality in which the authority district would be

located; the same boundaries had been approved for the authority district by the governing body of each municipality in which the authority district would be located; and, the governing body of the county in which a majority of the authority district would be located had approved by resolution the creation of the authority.

Each municipality in which the authority district was located by a majority vote of the members of its governing body could make a limited tax pledge to support the authority's tax increment bonds issued under the Act or, if authorized by the voters of the municipality, could pledge its full faith and credit for the payment of the principal of and interest on the bonds. The municipalities that had made a pledge to support the authority's tax increment bonds could approve by resolution an agreement among themselves establishing obligations each could have to the other party or parties to the agreement for reimbursement of all or any portion of a payment made by a municipality related to its pledge to support the authority's tax increment bonds.

Tax Increment Financing Plan

Under the Act, if the board of an authority determines it to be necessary, the board must prepare and submit a tax increment financing plan to the local governing body. The plan must comply with requirements of the Act concerning the transmission, expenditure, and reporting of tax increment revenues; include a development plan; and contain reasons that the plan will result in the development of captured assessed value that could not otherwise be expected, an estimate of the captured assessed value for each year of the plan, the estimated tax increment revenues, an explanation of the tax increment procedure, the maximum amount of note or bonded indebtedness to be incurred, the amount of operating and planning expenditures, the costs of the plan anticipated to be paid from tax increment revenues, the duration of the development plan and the tax increment plan, an estimate of the impact of tax increment financing on revenues of all taxing jurisdictions, a legal description of the eligible property to which the plan applies, and an estimate of the number of jobs to be created as a result of implementation of the plan.

The bill also would require that the plan include the proposed boundaries of a certified technology park to be created under an agreement proposed to be entered into, an identification of the real property within the certified technology park to be included in the tax increment financing plan for purposes of determining tax increment revenues, and whether personal property located in a certified technology park would be exempt from determining tax increment revenues.

Currently, a tax increment financing plan must provide only for the use of tax increment revenues for public facilities for eligible property whose captured assessed value produces the tax increment revenues or, to the extent eligible property is located within a certified industrial park, for other eligible property located in the certified industrial park. (The bill would refer to eligible property located in a "business development area", rather than in a certified industrial park.) Under the bill, this requirement would be subject to a provision in the bill allowing the tax increment financing plan to provide for the use of tax increment revenues from a certified technology park for public facilities for any eligible property located in the park.

Currently, approval of the tax increment financing plan must be in accordance with the notice, hearing, disclosure, and approval provisions of the Act. If the development plan is part of the tax increment financing plan, only one hearing and approval procedure is required for the two plans. Under the bill, for a plan submitted by an authority established by two or more municipalities, the notice required under the Act could be published jointly by the municipalities in which the authority district was located. The plan would not be considered approved unless each governing body in which the authority district was located made the determinations that the development plan and/or tax increment financing plan constituted a public purpose, and approved the same plan, including the same modifications, if any, made to the plan by any other governing body.

Exemption from Revenue Capture

Currently, within 60 days after a public hearing on the adoption of a resolution to create a local development finance authority, the governing body of a taxing jurisdiction, with millage that would otherwise be subject to capture, may exempt its taxes from capture by adopting a resolution and filing a copy with the clerk of the municipality proposing to create the authority. The bill provides that a resolution by a governing body of a taxing jurisdiction to exempt its taxes from capture would not be effective for the capture of taxes that were used for a certified technology park.

Disposition of Property and Proceeds

The present definition of “public facility” includes the acquisition and disposal of real and personal property or an interest in that property, demolition of structures, site preparation, relocation costs, and building rehabilitation costs. The bill would refer, instead, to the acquisition and disposal of “land that is proposed or intended to be used in the development of eligible property or an interest in that land, demolition of structures, site preparation, and relocation costs”.

The bill specifies that property qualified as a public facility under this provision could be sold, conveyed, or otherwise disposed of to any person, public or private, for fair market value or reasonable monetary consideration established by the authority, with the concurrence of the MEDC and the local municipality where the property was located based on a fair market value appraisal from a fee appraiser only if the property were sold for fair market value. Unless the property acquired by an authority was located in a certified business park or a certified technology park, an authority would have to remit all monetary proceeds from the sale or disposition of property qualified as a public facility as described above, and was purchased with tax increment revenues to the taxing jurisdictions. Proceeds distributed to taxing jurisdictions would have to be remitted in proportion to the amount of tax increment revenues attributable to each jurisdiction in the year the property was acquired. If the property were acquired in part with funds other than tax increment revenues, only that portion of the monetary proceeds received upon disposition that represented the proportion of the cost of acquisition paid with tax increment revenues would have to be remitted to taxing jurisdictions. If the property were located in a certified business park or certified technology park of the time of disposition, the authority could retain the monetary proceeds for any purpose necessary to further the development program for the certified business park or certified technology park with the tax increment financing plan.

If title to property qualified as a public facility (as described above) and acquired by an authority with tax increment revenues were sold, conveyed, or otherwise disposed of pursuant to the bill for less than fair market value, the authority would have to enter into an agreement relating to the use of the property with the person to whom the property was sold, conveyed, or disposed of. The agreement would have to include a penalty provision addressing repayment to the authority if the person sold, conveyed, or otherwise disposed of any interest in the property within 12 years after receiving title to the property from the authority. The bill specifies that this provision would not require enforcement of a penalty provision for a conveyance incident to a merger, acquisition, reorganization, sale-lease back transaction, employee stock ownership plan, or other change in corporate or business form or structure.

The penalty provision, described above, could not be less than an amount equal to the difference between the fair market value of the property when originally sold, conveyed, or otherwise disposed of and the actual consideration paid by the person to whom the property had been originally sold, conveyed, or otherwise disposed of.

Other Provisions

Financing Sources. Under the Act, the activities of a local development financing authority must be financed from contributions, property revenues, tax increment revenues, proceeds of tax increment bonds, proceeds of revenue bonds, money obtained from any other legal source, and/or money obtained from repayment of eligible advances or obligations. The bill would include loans from the Michigan Strategic Fund or the Michigan Economic Development Corporation as a financing source.

Job Transfers. The Act provides that if the construction of eligible property has, or may reasonably be expected to have the effect of transferring employment of 50 or more full-time jobs from one or more local governmental units to the municipality in which the eligible property is located, that eligible property must be considered excluded from the authority district or districts unless the legislative body of each local unit from which 50 or more full-time jobs are to be transferred consents to the inclusion of that eligible property in the authority district for purposes of the tax increment financing plan. The bill would delete this provision.

Definitions

Currently, “certified industrial park” means an area of land designated by the Michigan Jobs Commission as meeting all of the following requirements: it contains at least 40 acres of land; it is zoned

exclusively for use for eligible property; it has a site plan or plat approved by the city, village, or township in which the land is located; and, the developer of the land agrees to comply with the other requirements, not inconsistent with those provisions, imposed on property classified as a certified industrial park by the Michigan Jobs Commission under the certified industrial park program. The bill would delete the term “certified industrial park” and its definition and would refer, instead, to a “certified business park”, which would mean a “business development area” that had been designated by the MEDC as meeting criteria established by the MEDC. The criteria would have to establish standards for business development areas including use, types of building materials, landscaping, setbacks, parking, storage areas, and management. “Business development area” would mean an area designated as a certified industrial park under the Act before the bill’s effective date, or an area designated in the tax increment financing plan that was zoned to allow its use for eligible property; and had a site plan or plat approved by the city, village, or township in which the area was located.

The Act’s definition “eligible property” refers to land improvements, buildings, structures, and other real property, and machinery, equipment, furniture, and fixtures, located within an authority district, that have one of the primary purposes and uses listed in the Act, e.g., the manufacture of goods or materials or the processing of goods or materials by physical or chemical change, or agricultural processing. The current list also includes a high technology activity that has as its primary purpose research, product development, engineering, laboratory testing, or development of industrial technology, but this applies only to eligible property for which a tax increment financing plan or development plan was adopted and bonds were issued before January 1, 1993. The bill would refer simply to a “high technology activity”, which would be defined as it is in the MEGA Act (as indicated above). The bill also would include a business incubator among the primary purposes and uses of eligible property.

The bill would redefine “initial assessed value” as the assessed value of the eligible property identified in the tax increment financing plan or, for a certified technology park, the assessed value of any real and personal property included in the tax increment financing plan, at the time the resolution establishing the tax increment financing plan was approved as shown by the most recent assessment roll for which equalization had been completed at the time the resolution was adopted or, for property that became eligible property in other than a certified technology park after the date the plan was approved, at the time the property became eligible property. (This definition generally reflects the existing definition,

with the addition of references to certified technology parks.)

The bill would add to the definition of “public facility” the following costs approved by the MEDC: operating and planning costs included in a tax increment financing plan, including costs of marketing property within the district and attracting development of eligible property within the district; operational costs and the costs related to the acquisition, improvement, preparation, demolition, disposal, construction, reconstruction, remediation, rehabilitation, restoration, preservation, maintenance, repair, furnishing, and equipping of land and other assets that were or could become eligible for depreciation under the Internal Revenue Code for a business incubator located in a certified technology park; and costs related to the acquisition, improvement, preparation, demolition, disposal, construction, reconstruction, remediation, rehabilitation, restoration, preservation, maintenance, repair, furnishing, and equipping of land and other assets that, if privately owned, would be eligible for depreciation under the Internal Revenue Code for laboratory facilities, research and development facilities, conference facilities, teleconference facilities, testing, training facilities, and quality control facilities that were or that supported eligible property under the Act, that were owned by a public entity, and that were located within a certified technology park.

Currently, “tax increment revenues” means the amount of ad valorem property taxes and specific local taxes attributable to the application of the levy of all taxing jurisdictions upon the captured assessed value of real and personal property in the development area, subject to specific requirements. The bill, instead of referring to property in the development area, would refer to eligible property within the district or, for purposes of a certified technology park, real or personal property that was located within the certified technology park and included within the tax increment financing plan. Currently, tax increment revenues must include ad valorem property taxes and specific local taxes attributable to the application of the levy of the State pursuant to the State Education Tax Act and local or intermediate school districts upon the captured assessed value of real and personal property in the development area in an amount equal to the amount necessary to repay eligible advances, eligible obligations, and other protected obligations. Under the bill, the amount would have to be necessary to repay those advances and obligations, and to fund or to repay an advance or obligation issued by or on behalf of an authority to fund the cost of public facilities related to or for the benefit of eligible property located within a certified technology park to the extent the public facilities had been included in

an agreement under the bill, not to exceed 50%, as determined by the State Treasurer, of the amounts levied by the State pursuant to the State Education Tax Act and local and intermediate school districts for a period of up to 15 years, as determined by the State Treasurer, if he or she determined that the capture under this provision was necessary to reduce unemployment, promote economic growth, and increase capital investment in the municipality.

Currently, tax increment revenues do not include ad valorem property taxes or specific local taxes attributable either to a portion of the captured assessed value shared with taxing jurisdictions within the jurisdictional area of the authority or to a portion of value of property that may be excluded from captured assessed value. The bill provides, instead, that tax increment revenues would not include ad valorem property taxes or specific local taxes that were excluded from and not made part of the tax increment financing plan. The bill also states that tax increment revenues would not include the amount of ad valorem property taxes or specific taxes captured by a downtown development authority under the downtown development authority Act, tax increment financing authority under the Tax Increment Finance Authority Act, or brownfield redevelopment authority under the Brownfield Redevelopment Financing Act, if those taxes were captured by these authorities on the date that the initial assessed value of a parcel of property was established under the Local Development Financing Act.

MCL 125.2152 et al.

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

Michigan must compete for high-technology companies and their jobs against such high-technology giants as California. To compete effectively, the State must encourage the development of research parks where local communities and nearby educational and research institutions collaborate to attract high-technology firms. The bill would facilitate the development of these parks by allowing the use of tax increment financing for the development of facilities that would support businesses engaged in high-technology activities. Currently, the Act provides for the capture of taxes from property devoted to manufacturing and agricultural processing. Consequently, it has served as a means of helping local governments create industrial parks. The bill would allow a municipality with a local development finance authority to apply

for designation of all or part of the authority as a certified technology park that would contain a variety of publicly provided facilities and services useful to high-technology firms. Thus, the bill would expand the use of tax increment financing in business development areas and newly created certified technology parks, which would affect the types of property considered eligible property from which taxes may be captured and for which public facilities may be developed. The bill also would reduce limitations on the designation of business development areas, expand the scope of property from which taxes could be captured in certified technology parks, and replace the concept of certified industrial parks with business development areas to recognize the inclusion of both high-technology and industrial uses.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The fiscal impact of this bill cannot be estimated at this time because there is no way to know how many businesses would participate in the proposed new certified technology parks, or how many high technology businesses would locate in an existing certified industrial park (which would be called a business development area under the bill). There is also no way to know the amount of property taxes that would be captured from these new and expanded business activities, which would be used to help finance public facilities within these areas.

Fiscal Analyst: J. Wortley

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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.