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BILL



ANALYSIS

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Senate Bill 428 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Jason E. Allen  
Committee: Commerce and Tourism

Date Completed: 8-12-09

### **RATIONALE**

Under the Local Development Financing Act, a municipality may create an authority that can use tax increment financing to pay for public infrastructure improvements in a given area, or district. The financing mechanism allows the capture of the incremental growth in property tax revenue due to increased value over a period of time. By borrowing against future tax increment revenue, the authority is able to finance public improvements that will attract economic development projects. In some cases, local development financing authority districts may be designated as certified technology parks, also called SmartZones, where technology-based firms, entrepreneurs, and researchers can cluster. Provisions for the SmartZone designation were enacted in 2000 to promote collaboration among universities, industry, research organizations, and others, in order to encourage growth in technology-based businesses and jobs. It has now been suggested that the SmartZone concept should be extended to districts where alternative energy businesses could find "shovel ready" sites.

### **CONTENT**

The bill would amend the Local Development Financing Act to allow the designation of all or part of an authority district as a certified alternative energy park. The bill would do all of the following:

- Allow a municipality that created a local development financing authority to apply to the Michigan

**Economic Development Corporation (MEDC) for this designation.**

- Allow the MEDC to designate up to 10 certified alternative energy parks.
- Require certain conditions to be satisfied for the designation.
- Specify requirements for an agreement between an authority, its municipality, and the MEDC governing a certified alternative energy park.
- Allow the sale or rental of property at below-market rates, if it would help increase employment or private investment in a certified alternative energy park.
- Require the business plan for a proposed alternative energy park to address the availability of shovel-ready sites and other matters.
- Allow a municipality in which a certified alternative energy park was located to make a tax pledge to support an authority's tax increment financing (TIF) bonds.
- Include costs related to certified alternative energy parks in the Act's definition of "public facility".
- Include any township as a municipality for the purpose of creating and operating a certified alternative energy park.
- Prohibit the MEDC from entering into an agreement for an alternative energy park after December 31, 2011.

The bill is tie-barred to Senate Bills 358 and 493 and House Bill 4674. Senate Bill 358 would amend the Local Development

Financing Act to allow the MEDC to designate two additional certified technology parks (SmartZones). Senate Bill 493 and House Bill 4674 would amend the Michigan Business Tax Act to revise provisions granting tax credits to anchor companies.

Senate Bill 428 (S-2) is described in detail below.

#### Designation of Certified Alternative Energy Park

Under the bill, a municipality that had created a local development financing authority could apply to the MEDC for designation of all or a portion of the authority district as a certified alternative energy park, and to enter into an agreement governing the terms and conditions of the designation. The form of the application would have to be specified by the MEDC and include information it found necessary to make the determinations required under the bill.

After receiving an application, the MEDC could designate a certified alternative energy park that it determined would satisfy one or more of the following criteria, based on the application:

- A demonstrable and satisfactory assurance that the proposed certified alternative energy park could be developed principally to contain a business incubator and an alternative energy technology business.
- A demonstration that the proposed alternative energy park would be developed to take advantage of the unique characteristics and specialties offered by public and private resources available in the area where it would be located.
- The existence of a business plan for the proposed certified alternative energy park that identified its objectives in a clearly focused and measurable fashion and that addressed certain matters (listed below).
- The existence or strong likelihood of attracting alternative energy technology businesses to the proposed alternative energy park by exhibiting certain types of resources and organization.

These types of resources and organization would include significant financial and other

types of support from the public or private resources in the area, and proposed or actual ownership of land in sufficient quantity as to attract one or more major alternative energy technology businesses.

The business plan would have to address the availability of, and method proposed for, development and sale or conveyance of shovel-ready sites to include infrastructure and other improvements, including telecommunications technology, necessary for the successful development of the proposed alternative energy park. The business plan also would have to address the following:

- A commitment to new business formation or major business attraction.
- The clustering of businesses, technology, and research within the region.
- The opportunity for and costs of developing property under common ownership or control.
- Assumptions of costs and revenue related to the development of the proposed alternative energy park.

The bill would define "alternative energy technology business" as a business engaged solely in the research, development, or manufacturing of alternative energy technology. "Alternative energy technology" would mean equipment, component parts, materials, electronic devices, testing equipment, and related systems that are specifically designed, specifically fabricated, and used primarily for one or more of the following:

- The storage, generation, reformation, or distribution of clean fuels integrated within an alternative energy system or alternative energy vehicle, not including an anaerobic digester energy system or a hydroelectric energy system, for use within the alternative energy system or vehicle.
- The process of generating and putting into a usable form the energy generated by an alternative energy system.
- Research and development of an alternative energy vehicle.
- Research, development, and manufacturing of an alternative energy system, an anaerobic digester energy system, and/or a hydroelectric energy system.

The term would not include the component parts of an alternative energy system that are required regardless of the energy source.

The Act defines "business incubator" as real and personal property that is located in a certified technology park; is subject to an agreement with the MEDC; and is developed for the primary purpose of attracting one or more owners or tenants who will engage in activities that each would separately qualify the property as eligible property that will be used for high technology activity. Under the bill, a business incubator would have to be located in a certified technology park or a certified alternative energy park.

#### Certified Alternative Energy Park Agreement

An authority, and a municipality that incorporated it, could enter into an agreement with the MEDC establishing the terms and conditions governing a certified alternative energy park. The agreement would have to include the following:

- A description of the area to be included within the certified alternative energy park.
- Covenants and restrictions, if any, upon all or a portion of the property contained within the alternative energy park and terms of enforcement of those covenants and restrictions.
- The financial commitments of any party to the agreement and of any owner or developer of property, including sale or transfer of ownership or options upon designation of a certified alternative energy park for property within it.
- 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 default.
- The proposed method of ownership of the land within the alternative energy park.
- The costs approved for public facilities acquired pursuant to the Act.
- The proposed method of operating the alternative energy park.

Upon designation of the alternative energy park pursuant to the terms of the agreement, the subsequent failure of any party to comply with the terms would not

result in the termination or rescission of the designation.

#### Below-Market Sale or Rental

If the MEDC determined that a sale price or rental value at below-market rate would assist in increasing employment or private investment in a certified alternative energy 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 park at below-market rate.

If public facilities developed pursuant to an alternative energy park agreement 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 that the public facilities were used as eligible property. Legal and equitable remedies and rights could include penalties and actual or liquidated damages.

#### Limits on Designation

Except as otherwise provided in the bill, an agreement designating a certified alternative energy park could not be made after December 31, 2011, but any agreement made on or before that date could be amended after that date.

The MEDC could not designate more than 10 certified alternative energy parks. For purposes of this limit, alternative energy parks located in the same county would have to be counted as one certified alternative energy park.

#### Tax Pledge & TIF Plan

For a local development financing authority established by two or more municipalities, as allowed under the Act, each municipality in which the authority district was located, by a majority vote of the members of the 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 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.

Under the Act, if an authority board determines that it is necessary for the achievement of the purposes of the Act, it must prepare and submit a tax increment financing plan to the governing body of the municipality or municipalities. The Act specifies information that must be contained in a TIF plan. Under the bill, a plan would have to include the proposed boundaries of a certified alternative energy park to be created under an agreement, an identification of the real property within the alternative energy park to be included in the TIF plan for purposes of determining tax increment revenue, and whether personal property located in the alternative energy park was exempt from a determination of tax increment revenue.

#### Public Facility Costs

The powers of an authority board include planning and proposing the construction, repair, renovation, or rehabilitation of a public facility, and the costs of a public facility may be paid for through tax increment financing. The Act defines "public facility" with regard to certain infrastructure, property, and costs, including costs related to the operation, acquisition, improvement, preparation, demolition, disposal, construction, reconstruction, remediation, rehabilitation, restoration, preservation, maintenance, repair, furnishing, and equipping of land and other assets for a business incubator located in a certified technology park. The bill also would include those costs for a business incubator located in a certified alternative energy park. In addition, it would include various costs incurred for facilities that would be owned by a public entity and that were located within a certified alternative energy park and would be conveyed by the public entity to an alternative energy technology business.

#### Municipality; Authority

The Act defines "municipality" as a city, village, or urban township. Under the bill, for purposes of creating and operating a

certified alternative energy park, "municipality" would include townships that are not urban townships. (An urban township is a township that meets one of six sets of criteria, which pertain to the population of the township or the county in which it is located; the provision of public services; proximity to a railroad and a limited access highway; State equalized valuation; the adoption of a master plan or a master zoning plan; and other factors.)

The bill also would include in the definition of "urban township" a township that joined an authority that was seeking or had entered into an agreement for a certified alternative energy park.

The Act allows a municipality both to establish a single authority, and to join with one or more other municipalities located in the same county to establish an authority. A municipality may jointly establish only one authority. Under the bill, a municipality could jointly establish one authority for a certified technology park and one authority for a certified alternative energy park.

#### Park Ownership

Upon approval of the MEDC, a certified alternative energy park could be owned and operated by an economic development corporation created under the Economic Development Corporations Act or other public body agreeable to all members.

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**

The bill would create an important economic development tool for the State and local communities within it, including the Great Lakes Bay Region. This region, which consists of Bay, Midland, and Saginaw Counties, is home to a number of alternative energy-related ventures involving solar power. These include Hemlock Semiconductor Corporation, which is the world's leading producer of polycrystalline silicon, the key ingredient for solar panels. Another company, Evergreen Solar, Inc., which is headquartered in Massachusetts,

invested \$35 million to \$50 million in a new 31,400-square-foot manufacturing facility in Midland to produce components for the company's patented wafer solar cells. In addition, Midland-based Dow Corning Corporation has a new 27,000-square-foot Solar Module and Assembly Application Center.

By enabling municipalities to use tax increment financing to improve infrastructure and offer shovel-ready sites to alternative energy technology businesses, the bill would give local units in the Great Lakes Bay Region another resource to attract firms engaged in solar energy research and manufacturing. These municipalities are competing with other states and countries for this business. Evergreen Solar, for example, chose to build a solar panel manufacturing plant in China. Having this economic development incentive in place could help Midland secure the company's next plant.

Other municipalities in the State also could apply for designation of a certified alternative energy park, and the MEDC could designate up to 10 such parks (counting parks in the same county as one). This measure would build on steps Michigan already has taken to promote alternative energy, diversify the economy, and enable local government to compete with out-of-State venues for job providers.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would reduce State and local unit revenue and increase State expenditures by an unknown amount depending upon the number of additional properties affected, as well as their specific characteristics. State expenditures would be increased in order to maintain per-pupil funding guarantees for locally captured operating mills.

The Treasury Department estimates that during FY 2008-09, local units will receive \$310.0 million less revenue due to various existing tax capture provisions (and affected property) similar to those in the bill. Affected local units include cities and counties, as well as other entities with the ability to levy property taxes, such as library and transportation authorities.

Fiscal Analyst: David Zin

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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.