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BILL ANALYSIS

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Senate Bill 428 (Substitute S-1)
Sponsor: Senator Jason E. Allen
Committee: Commerce and Tourism

Date Completed: 6-2-09

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.**
- **Specify conditions that would have to be satisfied for the designation.**
- **Specify requirements for an agreement between an authority, its municipality, and the MEDC establishing the terms and conditions governing a certified alternative energy park.**
- **Prohibit the MEDC from designating more than 10 certified alternative energy parks, or entering an agreement for an alternative energy park after December 31, 2011.**
- **Allow the sale or rental of property at below-market rates, if it would assist in increasing employment or private investment in a certified alternative energy park.**
- **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".**

Designation of Certified Alternative Energy Park

The Act allows a local government to create a local development financing authority to finance public improvements in a given area, by capturing increases in property tax revenue due to increased value (tax increment financing). In some cases, a local development financing authority district may be designated as a certified business park or a certified technology 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 determined 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 organizations 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 matters that a business plan for a proposed alternative energy park would have to address would include 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 development of properties under common ownership or control.
- 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.
- Assumptions of costs and revenue related to the development of the proposed alternative energy park.

"Alternative energy technology business" would mean that term as defined in the Michigan Next Energy Authority Act (a business engaged solely in the research, development, or manufacturing of alternative energy technology).

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 properties 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 alternative energy 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.

Designation Limits

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 tax increment financing 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 pursuant to the bill, 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 would include those costs for a business incubator located in a certified alternative energy park, as well. It also 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.

Other Provisions

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.

Under the Act, a business incubator must be located in a certified technology park. The bill would require a business incubator to be located in either a certified technology park or a certified alternative energy park.

MCL 125.2152 et al.

Legislative Analyst: Patrick Affholter

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 Michigan Department of Treasury estimates that during FY 2008-09, local units will receive \$310.0 million less revenue due to various existing tax capture provisions (and affected properties) similar to those contained 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 authorities 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.