

**MICHIGAN NEXT ENERGY  
AUTHORITY ACT**

**House Bill 6070**  
**Sponsor: Rep. Jim Howell**  
**Committee: Energy and Technology**

**Complete to 5-14-02**

**A SUMMARY OF HOUSE BILL 6070 AS INTRODUCED 5-9-02**

House Bill 6070 would create the “Michigan Next Energy Authority Act” to establish the Michigan Next Energy Authority as a public body within the Department of Management and Budget. The authority, or “MNEA”, would be charged with promoting and increasing the research, development, and manufacturing of “alternative energy technologies,” as identified in the act, as a strategy for promoting economic development in the state (see below). The act would transfer to the authority four parcels of state-owned land located in York Township (Washtenaw County). Once the land was transferred, MNEA could develop a plan for the reuse or development of the property that specified potential uses for the property that further the state’s economic goals. MNEA could then convey any or all of the land for its “value,” which would be based on the property’s “highest and best use” in accordance with the reuse or development plan and MNEA’s core mission—i.e., the promotion of alternative energy technologies—but which would not necessarily involve monetary compensation. Any land conveyed by the authority could be used exclusively for public purposes, including the act’s purposes, and if the land was not being used for such purposes, MNEA could reenter and repossess the property.

The bill provides general guidance for MNEA by authorizing it do what is “necessary or convenient to implement the purposes, objectives, and provisions of the act and the purposes, objective, and powers delegated to the board by other laws or executive orders”. In addition to powers generally given to state authorities, MNEA would be authorized to do all of the following:

- research and publish documents on the development and use of alternative energy technology;
- manage and oversee an alternative energy zone (“zone”) on MNEA land and receive designation of renaissance zone status for the zone;
- finance, direct, or otherwise aid in the planning 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 certain restrictions;
- make grants, loans, and investments, guarantee and insure loans, leases, bonds, notes, or other public and private indebtedness, and issue letters of credit;

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- construct, acquire, purchase, or lease, reconstruct, improve, repair, or equip a project or any part of a project, including related infrastructure;
- 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 its money, revenues, income, and properties (subject to certain constraints);
- acquire from a person or government leaseholds, property, or interest in property and own, hold, clear, improve, rehabilitate and sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber leaseholds, property, or interest in property for the purposes of the act;
- charge, impose, and collect fees in connection with transactions and provide for reasonable penalties for delinquent payments;
- enter into a lease, which could include the option to purchase or renew, for the use or sale of a project;
- mortgage or create security interests in a project, lease, loan, or in rents, revenues, or sums to be paid under a lease or loan, in favor of MNEA bond or note holders;
- convey or release a project or part of a project under any agreement after provision had been made for the retirement in full of the bonds or notes issued for that project (subject to other requirements);
- create and operate centers, accounts, and funds for the use, management, and disbursement of property or other assets;
- promote research, development, and manufacturing of alternative energy technology through the conveyance or lease of real property;
- develop property for economic development reasons to advance MNEA's purposes;
- make and enter into contracts or agreements with various state universities, a community college, governmental agencies, local units of government, and nonprofit corporations necessary or incidental to accomplish the powers and duties of MNEA under the act or other laws that relate to the purposes and responsibilities of MNEA. (Specifically, MNEA could contract or make agreements with the University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan Technological University, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris State University, and Grand Valley State University);
- do anything else necessary or convenient to promote and increase the research, development, and manufacturing of alternative energy technology and to otherwise achieve the objectives and purposes of MNEA, the act, or other related laws.

The bill contains and refers to a long list of definitions of terms used in the bill and in related legislation (House Bills 6071-6077). For a conceptual understanding of what the bill

proposes to accomplish, the most important definitions are those of “alternative energy technology” and “alternative energy system”.

“Alternative energy technology” would mean, as it would be defined by House Bill 6074, equipment, component parts, materials, electronic devices, testing equipment, and related systems that are solely related to the following:

- the storage of hydrogen for use in an alternative energy system;
- the process of generating and putting into a usable form the power or heat generated by an alternative energy system;
- a microgrid—i.e., the lines, wires, and controls to connect two or more alternative energy systems.

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

“Alternative energy system” would refer to the small-scale generation of power or heat from one or any combination of the following types of energy systems (each of which is defined more fully in House Bill 6074):

- fuel cell;
- photovoltaic;
- solar-thermal;
- wind;
- CHP;
- microturbine;
- macroturbine;
- Stirling cycle;
- battery cell;
- clean or renewable fuel.

Authority. MNEA would exercise its prescribed powers, duties, and functions independently of the director of the DMB, but the director would supervise and direct its budgeting, procurement, and related administrative functions. MNEA could contract with the DMB for the purpose of maintaining its rights and interest. MNEA’s accounts could be subject to annual financial audits by the auditor general, and its records would have to be maintained according to generally accepted accounting principles.

Board. MNEA would be governed by a seven-member board consisting of state residents appointed by the governor. Three of the seven members would represent the state's economic development interests and would be appointed for the following initial terms. One member would represent the University of Michigan and would be appointed for an initial four-year term. One board member would represent the government of Washtenaw County and would be appointed for an initial three-year term. One board member would represent the government of York Township and would be appointed for an initial three-year term. Of the remaining four board members, one would be appointed for an initial two-year term, one would be appointed for an initial three-year term, and the other two would be appointed for initial four-year terms. After the first appointment, each member would serve for four-year terms, except that a person appointed to fill a vacancy would be appointed for the balance of the unexpired term. A member would hold office until a successor had been appointed and could be reappointed. The governor would designate one member of the board to serve as its chairperson, and the board would elect from its members a vice-chairperson, secretary, and any additional officers that it considered necessary. The chair would serve a four-year term, and the other officers would be elected annually. Members of the board would not be paid but could be reimbursed for expenses.

The board could hold its first meeting as soon as four members had been appointed. If fewer than four members had been appointed within 30 days after MNEA was created, however, a majority of the appointed board members could hold the first meeting of the board after the expiration of that 30-day period. In any case, the first board meeting could not be held more than 60 days after the creation of MNEA. Except for those powers reserved or delegated to a chief executive officer of MNEA by the act or by the board, the board could not delegate any power of the board to any other officer or committee. The board could withdraw any power that the board had previously delegated to the chief executive officer (CEO), if it appointed one (see below). The board would have to conduct its business at public meetings held in accordance with the Open Meetings Act, and writings prepared, owned, used, in the possession of, or retained by the board in the performance of an official function would have to be made available to the public in accordance with the Freedom of Information Act.

The board could only act by resolution with a majority of members in office constituting a quorum for the transaction of business. In general a vote of the majority of members present when there was a quorum would constitute an action of the board (or a committee of the board). However, a vote of a majority of the members serving would be required to approve the issuance of bonds, to approve or amend the annual budget, or to hire, remove, discharge, or set the salary of the CEO. Before the beginning of each fiscal year, the board would have to prepare a budget containing all of the following: an itemized statement of the estimated current operation expenses and the expenses for the operation and development of the land under the board's jurisdiction; the amount necessary to pay the principal and interest of any outstanding bonds or obligations maturing during the ensuing fiscal year or that had previously matured and remained unpaid; an estimate of the revenue of the authority from all sources for the ensuing fiscal year; and other amounts necessary to further purposes of the act. MNEA's budget would be funded by proceeds derived from the conveyance of land that MNEA held and any gifts, grants, loans, and other aids from any person or the federal, state, or a local government or any government agency.

Chief executive officer. The board could appoint a person who was not a member of the board to serve as MNEA's CEO, to whom the authority could delegate any of its administrative powers and authorization. The CEO would be an ex officio member of the board. He or she would not have a vote, would not be considered in determining whether a quorum was present, and would have to have professional qualifications commensurate with the responsibility of the position. During employment, the CEO could not have a financial interest in facilities or projects over which MNEA had jurisdiction or power to act. The CEO would have to take and file the state constitutional oath of office before performing duties of his or her office. Subject to the board's approval, the CEO would supervise, and be responsible for, all of the following: MNEA's performance of its functions; a regular report describing its activities and financial condition; the issuance of bonds and notes approved by the board; the negotiation and establishment of compensation and other terms and conditions of employment for employees; the negotiation, supervision, and enforcement of contracts and the supervision of contractors and subcontractors in the performance of their duties; and other activities or functions that the board considered necessary.

Chief financial officer. If the board considered it necessary, the CEO could appoint a person with the appropriate professional qualifications as chief financial officer (CFO) who would serve as MNEA's treasurer. Despite any law or charter provision to the contrary, the CFO would receive all money belonging to MNEA or arising or received in connection with the land over which jurisdiction had been transferred to MNEA, from whatever source derived. The CFO could only deposit, invest, and spend MNEA money in accordance with the act or with policies, procedures, ordinances, or resolutions adopted by the board. The CFO would be required to provide to the board copies of all reports that he or she provided to the CEO.

Other employees. The board could also employ legal and technical experts, private consultants and engineers, accountants, and other agents or employees for rendering necessary professional and technical assistance and advice. MNEA would determine the qualifications, duties, and compensation of its employees.

Public service and conflicts of interest. Members of the board and officers and employees of MNEA would be considered public servants subject to acts dealing with contracts between public servants and public entities (Public Act 317 of 1968) and conflicts of interest (Public Act 318 of 1968). A board member, or an officer, employee, or agent of MNEA would be required to discharge his or her duties in a nonpartisan manner, in good faith, in the best interests of MNEA, and with diligence, care, and skill. The board could establish policies and procedures requiring periodic disclosure of relationships that could give rise to conflicts of interest. The bill proposes various other guidelines for determining the existence of, and dealing with, conflicts of interest.

MNEA powers. Except as otherwise specified, MNEA could do all things necessary or convenient to implement the purposes, objectives, and provisions of the act and the purposes, objectives, and powers delegated to the board by other laws or executive orders. In addition to the powers described above, the bill would state that MNEA could acquire, use, and transfer real or personal property consistent with the act's purposes. Among other things, MNEA could purchase real property for the purpose of using or developing property that it had otherwise acquired for alternative energy technology or related infrastructure or to facilitate the assembly of property for sale or lease to any other person. MNEA could also take actions necessary to

preserve the value of its property and would be required to defend any actions concerning title claims against property that it held. MNEA would have exclusive jurisdiction over all property that it held.

All powers and duties granted by the act to the governor, MNEA, or the board, including the authority to convey, transfer, or dispose of property could be exercised regardless of any other law, charter provision, or ordinance to the contrary. In the exercise of its powers and duties under the act and its powers relating to property held by MNEA, MNEA would have “complete control as fully and completely 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.

Interlocal agreements. MNEA and the governing body board of any of the state universities listed above, a governmental agency, or a local unit of government could enter into an interlocal agreement providing for the joint exercise of powers granted to an authority under the act, including powers related to the acceptance and management of real property. The university governing body board, governmental agency, or local unit of government would have the same powers and duties as MNEA for the purposes of such an agreement, and MNEA could transfer property to a public body corporate created by such an agreement.

Bonds and notes. MNEA could authorize and issue bonds or notes payable solely from revenues or funds available to MNEA. The bonds and notes would not be a debt or liability of the state and would not create or constitute any indebtedness, liability, or obligations of the state or constitute a pledge of the faith or credit of the state. All expenses incurred in issuing bonds and notes would be payable solely from revenues or funds provided or to be provided under the act. The bonds and notes would not be subject to the Revised Municipal Finance Act but their issuance would be subject to the Agency Financing Reporting Act. MNEA could issue bonds and notes in principal amounts that it considered necessary for any purpose; the bill enumerates several possible purposes. The bill sets forth various specifications for the bonds including that they could mature at a time or times not exceeding 30 years from the date of issuance. The members of the board and any person executing bonds or notes issued as provided in the bill and any person executing any agreement on behalf of MNEA would not be personally liable on the bonds or notes by reason of their issuance.

The state would pledge to and agree with the holders of bonds or notes that it would not limit or restrict the rights vested in MNEA by the act to fulfill the terms of an agreement made with the holders of MNEA bonds or notes or in any way impair the rights or remedies of the holders of the bonds or notes of MNEA until the bonds and notes, together with any interests, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged. The bill sets forth various other provisions with respect to bonds and notes.

Fund. The bill would create the Michigan Alternative Energy Technology Fund under MNEA’s jurisdiction and control, which could be administered for the general operations of MNEA and to secure any of MNEA’s notes and bonds. MNEA would deposit into the fund all money it received from the sale, transfer, or lease of property under the act. MNEA would also credit to the fund the proceeds of the sale of notes or bonds to the extent provided for in the

authorizing resolution of MNEA and any other money made available to MNEA for the purposes of the fund. If at any time the fund had been exhausted, MNEA on or before September 1 would have to certify to the governor the amount necessary to restore the fund to an amount equal to the payment of principal and interest of notes or 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 are redeemed before maturity. The governor would be required to include in his or her annual budget the amount certified by MNEA.

Tax exemption. MNEA would be exempt from and would not be required to pay taxes on any real or personal property belonging to it and being used for a public purpose, and the bill states that MNEA property would be public property devoted to an essential public and governmental function and purpose. MNEA's income and operation, including bonds or notes that it issued and the interest and income derived from the bonds or notes, would be exempt from all taxes and special assessments of the state or a political subdivision of the state.

Transfer of state owned property to MNEA. The bill would transfer to MNEA, without consideration, four designated parcels of state owned property in York Township (Washtenaw County). The parcels would be subject to any easements, rights-of-way, or restrictions existing at the time of transfer. After the land was transferred, MNEA, on behalf of the state and for the purpose of promoting economic development and the purposes of MNEA, could convey for value, or could convey a leasehold in, any portion or all of the parcels of property designated. Any reuse or development of the property conveyed or leased under the act would have to be done by MNEA in conformance with a plan that it developed. The authority could enter into an agreement with any of the state universities listed above, a local unit of government, a governmental agency, or a nonprofit corporation to create the 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.

Despite any other provisions to the contrary, value of the designated property would be determined by MNEA based on the property's highest and best use in accordance with MNEA's reuse or development plan and MNEA's purposes. MNEA, on terms and conditions, and in a manner for consideration that it considered proper, fair, and valuable, could convey, sell, transfer, exchange, lease (as lessor), or otherwise dispose of property or rights or interests in property in which it held a legal interest to any public or private person for the specific purpose of fulfilling the act. Consideration received from any conveyance of MNEA's real or personal property would be deposited in the Michigan Alternative Energy Technology Fund.

Any conveyance of the property described would have to provide for all of the following:

- that the property would be used for public purposes or to further the public purposes of the act, as determined by MNEA according to the purposes in the act, and that upon termination of that use or use for any other purpose, MNEA could reenter and repossess the property, terminating the grantee's estate in the property;

- that any subsequent conveyance by the grantee or the grantee's successor would also be subject to the "exclusive use" and right of reentry and possession provisions;

- that if the grantee or the grantee's successor disputed MNEA's exercise of its rights of reentry and possession and failed to promptly deliver possession of the property to the state, the attorney general could bring an action to quiet title to, and regain possession of, the property.

- A conveyance authorized under the act would be by quitclaim deed approved by the attorney general and would convey all rights held by the state to coal, oil, gas, and other minerals found on or under the property conveyed.

Liberal construal of intent. The bill states the following: "This act shall be construed liberally to effectuate the legislative intent and its purposes. All powers granted shall be cumulative and not exclusive and shall be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers."

Analyst: J. Caver

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.