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BILL ANALYSIS

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Senate Bill 1164 (as introduced 3-4-08)
Sponsor: Senator Roger Kahn, M.D.
Committee: Energy Policy and Public Utilities

Date Completed: 3-13-08

CONTENT

The bill would enact the "Clean Energy Authority Act" to do the following:

- **Create the Clean Energy Authority, which would consist of five members appointed by the Governor with the advice and consent of the Senate.**
- **Require the Authority to develop and implement a statewide integrated energy resource plan.**
- **Require the Authority, in conjunction with the Department of Natural Resources (DNR), to develop a plan to promote the leasing of State-owned land for the storage of greenhouse gases.**
- **Require the Authority to assist in the development of at least one pilot IGCC facility (integrated gasification combined cycle plant).**
- **Require the Authority to submit applications to the DNR identifying State-owned land the Authority wished to secure and develop under oil and gas leases, and require the DNR to enter into leases with the Authority.**
- **Allow the Authority to assign up to 49% of its working interest in each oil and gas lease to a qualified person or persons.**
- **Allow the Authority to enter into a joint venture with one or more qualified persons for the development and operation of new gasifiers or IGCC facilities.**
- **Allow the Authority to borrow money and issue bonds and notes.**
- **Create the "Clean Energy Fund", which would receive money derived**

from the Authority's working interest in oil and gas property, and other funds.

- **Specify conflict of interest provisions that would apply to Authority members and employees.**

Creation of Authority

The Clean Energy Authority would be created as a public body corporate and politic and an autonomous entity within the Department of Treasury. The Authority would be a quasi-corporation and would exercise its prescribed statutory powers, duties, and function independently of the head of the Department. The property, revenue, receipts borrowings, appropriations, allowances, and other funds of the Authority would belong to it.

The Authority would consist of five individuals appointed by the Governor with the advice and consent of the Senate. Not more than three members could belong to the same political party. Members would be appointed for four-year terms and would have to serve without compensation for services, but could receive reasonable reimbursement for necessary travel and expenses incurred in the discharge of their duties.

The Authority could act only by resolution approved by a majority of the members appointed and serving.

When authorizing expenditures and investments under the proposed Act, the Authority could not consider whether a

recipient had made a contribution or expenditure under the Michigan Campaign Finance Act. Expenditures under the proposed Act could not be used to finance or influence political activities.

If requested by the Authority, the Department of Natural Resources (DNR) would have to provide staff and other support to the Authority sufficient to carry out its duties, powers, and responsibilities. All State departments and agencies would have to provide full cooperation to the Authority in the performance of its duties, powers, and responsibilities.

In its discretion, the Authority could contract with others, public or private, for the provision of all or part of the services necessary for its management and operation.

Authority Powers & Duties

The Authority would have the powers and duties necessary to carry out the proposed Act, including the power to do the following:

- Spend revenue and other funds under its control without legislative appropriation.
- Make grants, loans, and investments; guarantee and insure loans, leases, bonds, notes, or other indebtedness, whether public or private; and issue letters of credit.
- Acquire, hold, convey, lease, mortgage, or otherwise dispose of real or personal property, including oil, gas, and mineral resources, and working interests in oil and gas property.
- Borrow money and issue its bonds.
- Invest any funds not required for immediate use or disbursement, at its discretion, in obligations it determined to be proper.
- Engage personnel and retain the services of private consultants, managers, attorneys, auditors, engineers, geologists, land experts, and scientists.
- Charge, impose, and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment.

The Authority also could invest in or otherwise enter into and perform joint exploration agreements, joint operating agreements, joint development agreements, and any other necessary contracts and

agreements with a qualified person or persons to explore for, develop, and produce oil, gas, and mineral resources from oil and gas property co-owned by the Authority and one or more qualified persons.

"Oil, gas, and mineral resources" would mean the physical concentration of naturally occurring oil, gas, petroleum, and associated minerals and substances in and under State-owned land that can be extracted for commercial profit. "Oil and gas property" would mean all oil, gas, and mineral leasehold interests transferred, or otherwise leased, to the Authority by the DNR pursuant to Section 502 of the Natural Resources and Environmental Protection Act. (That section authorizes the DNR to enter into contracts for the taking of coal, oil, gas, and other mineral products from State-owned land, on a royalty or another basis.)

Clean Energy Fund; Authority Revenue

Any money of the Authority would have to be paid to the State Treasurer as an agent of the Authority, who could not commingle it with any other money. Money of the Authority would have to be deposited in a separate revolving fund under the Authority's jurisdiction and control, to be known as the "Clean Energy Fund". The State Treasurer would have to credit to the Fund interest and earnings from Fund investments.

All of the following would have to be paid into the Clean Energy Fund:

- Any money appropriated by the State for the purposes of the Fund.
- Any money that the Authority received in repayment of advances made from the Fund.
- Money derived from the Authority's working interest in oil and gas property.
- Any other money that could be made available to the Authority from any other source.

The Authority could use its revenue to further the purposes of the proposed Act, including to repay bonded indebtedness, provide working capital, develop and assist in or encourage the development of alternative energy products, assist in and encourage the development of alternative and renewable energy facilities to capture and sequester greenhouse gases, and assist

in and encourage the development of enhanced oil recovery projects.

("Alternative and renewable energy" would mean any of the following: energy produced from an IGCC facility that captures greenhouse gases; biomass; geothermal energy; solar thermal energy; wind energy; and hydroelectric energy. "Alternative and renewable energy facility" would mean a facility or energy system that uses alternative and renewable energy to produce synthetic methane gas and that generates and transmits or distributes electricity from that gas. "Greenhouse gas" would mean carbon dioxide, methane, chlorofluorocarbons, and hydrochlorofluorocarbons.)

Energy Resource Plan; Greenhouse Gas

The Authority would be required to develop and implement a statewide integrated energy resource plan. The plan would have to include all of the following:

- The development of facilities to capture and/or sequester greenhouse gas.
- The development of gasifiers.
- The promotion of enhanced oil recovery from State-owned land using captured greenhouse gases.
- The promotion of alternative and renewable energy facilities in the State.
- The exploration for and development and production of oil, gas, and mineral resources in the State.

In conjunction with the DNR, the Authority would have to develop a plan and make recommendations to the Legislature to promote the leasing of State-owned land that included depleted oil and gas reservoirs or other geographic features or facilities suitable for the storage of captured greenhouse gases. The plan and recommendation would have to be submitted to the Legislature within 180 days after the bill's effective date.

("Gasifier" would mean a facility located in this State that produces synthetic gas from carbon-based feedstock such as coal, petroleum coke, wood, biomass, agricultural products, and other products.)

IGCC Facility; Joint Venture

"IGCC facility" would mean an integrated gasification combined cycle plant located in Michigan that produces synthetic methane gas from carbon-based feedstock, including coal, petroleum coke, wood, biomass, agricultural products, and other products, and uses the synthetic gas to generate electricity. The term would include the transmission lines and facilities, gas transportation lines and facilities, and associated property and equipment employed specifically to serve the facility.

The Authority would be required to assist in and encourage the development of at least one pilot IGCC facility that consisted of both a gasifier that was capable of capturing greenhouse gases, and an electric power plant that was fueled by some or all of the synthetic gas and was capable of producing at least 250 megawatts of electric power.

The Authority could enter into a joint venture with one or more qualified persons for the purpose of developing, constructing, owning, operating, and maintaining, or participating in the development, construction, ownership, operation, and maintenance of, one or more new gasifiers or IGCC facilities located within the State.

State-Owned Land: Oil & Gas Leases

The Authority would have to submit to the DNR applications identifying State-owned land the Authority wished to secure and develop, as lessee, under oil and gas leases granted by the Department, as lessor. Before submitting an application, the Authority would have to consider whether the land had unusual or sensitive environmental features that should be reserved and maintained in an undeveloped state, and would have to solicit opinions of interested groups and the public.

Upon receiving an application, the DNR would have to enter into a direct lease with the Authority covering the State-owned land identified in the application. The DNR would not be required to enter into a direct lease covering any land that was then in production or was leased or permitted for drilling or production, or land the Department determined had unusual or sensitive environmental features that should be reserved by the State and maintained in

an undeveloped state. After the abandonment, release, discharge, cancellation, or termination of any lease covering such land retained by the DNR under these provisions, however, the Department would have to enter into a direct lease with the Authority covering the land to the extent it was identified in an application.

The Authority would have to pay the DNR the royalty due under each lease with the Department, which would have to be applied according to Article IX, Sections 35 and 35a of the State Constitution. (Section 35 provides for the Michigan Natural Resources Trust Fund, which consists of royalties, bonuses, and rentals collected or reserved by the State under leases for the extraction of nonrenewable resources from State-owned land. A portion of that revenue must be deposited into the Michigan State Parks Endowment Fund, which is created under Section 35a.)

The Authority could assign to a qualified person or persons up to an aggregate 49% of its working interest in each oil and gas lease entered into under these provisions. As a condition of an assignment, the Authority would have to require that the qualified person or persons agree, as co-owners of the lease, to participate with the Authority in the joint development of the leases under a joint exploration agreement, joint operating agreement, joint development agreement, or other agreement the Authority considered necessary. Each agreement would have to require the qualified person or persons to contribute capital and pay all development and operating costs of the joint development in which the person or persons participated, in proportion to its or their share of the working interest in each lease.

The Authority would have to make decisions as to the time, place, and manner of drilling and extraction of oil, gas, and mineral resources under the proposed Act, including the designation and appointment of the operator of each lease. The Authority would be subject to regulation by the DNR in the same manner and to the same extent as any other lessee.

"Working interest" would mean the operating interest under an oil and gas lease that includes the exclusive right to explore

for, develop, produce, and take the oil, gas, and mineral resources in, under, and that the may be produced from the land covered by the lease. The working interest would be subject to all costs of exploration, development, and production while the lessor received its share of production free of those costs. The working interest would embody the right to share in the production, or revenue representing the proceeds of production, attributable to its fractional interest under the lease.

Qualified Person

For purposes of the preceding provisions, "qualified person" would mean a person who meets all of the following criteria:

- Has oil and gas industry experience, reputation, and business probity.
- Has a commitment and ability to enter into a development agreement with the Authority to develop and participate in the development of one or more pilot IGCC facilities.
- Has a commitment and ability to capture and use greenhouse gases by sequestration for storage, enhanced oil recovery, and other technology.
- Has obtained the right to use integrated gasification combined cycle technology to develop an IGCC facility.
- Has secured a site for an IGCC facility that has access to existing pipelines, high-voltage electric transmission lines, and available infrastructure, and has the demonstrated support of county and municipal governments in the immediate area.
- Has applied for or received an allocation of tax credits available under 26 USC 48 or other energy-based incentives from the Federal government.

(Under 26 USC 48, a tax credit is available for certain types of energy property, such as solar energy equipment and equipment used to produce energy from a geothermal deposit, that a taxpayer puts into service during a tax year.)

The qualified person or persons selected to receive a working interest would have to be the person or persons the Authority determined would provide the best value to the State in achieving the purposes of the proposed Act. In determining the best value, the Authority could consider the best

interest of the State, including any positive economic impact likely to be generated by the development of IGCC facilities, the economic and environmental impact resulting from the development and use of alternative and renewable energy, and the skilled jobs and increased capital investment relating to the development of an IGCC facility and the use of alternative and renewable energy.

Authority Notes & Bonds

The Authority could borrow money and issue bonds or notes to provide sufficient funds to achieve its purposes and objectives, including amounts necessary to pay the costs of acquiring, maintaining, exploring, developing, and operating oil and gas property and alternative and renewable energy facilities, including administrative costs; to make loans for the costs of those activities; to make grants; to provide money to guarantee or insure loans, leases, bonds, notes, or other indebtedness; and to make working capital loans.

The Authority also could borrow money and issue bonds or notes to refund bonds or notes of the Authority, pay the costs of issuance of bonds or notes, pay interest on bonds or notes, and establish a reserve for the payment of principal and interest on the bonds or notes.

The bonds and notes would have to be authorized by resolution adopted by the Authority, which could contain provisions described in the bill. The bonds and notes could be sold at public or private sale at the price or prices determined by the Authority. Except as the Authority otherwise provided, every issue of its bonds or notes would be general obligations of the Authority payable out of revenue, property, or money of the Authority. The bonds or notes would be negotiable instruments for all purposes of the Uniform Commercial Code.

Bonds or notes issued by the Authority would not be subject to the Revised Municipal Finance Act, and would not have to be registered. A filing of an Authority bond or note would not be required under the Uniform Securities Act.

The State would not be liable on Authority bonds or notes, and they could not be considered a debt of the State.

Authority bonds and notes would be securities in which the public officers and bodies of the State, municipalities, insurers, financial institutions, fiduciaries, and all other people authorized to invest in bonds or other obligations of the State, could properly and legally invest funds.

The property of the Authority, including its share of any joint venture, and all Authority bonds and notes, the interest on them, and their transfer, would be exempt from all taxation, including the severance tax, by the State or any of its political subdivisions, except for estate, gift, and inheritance taxes.

The issuance of Authority bonds and notes would be subject to the Agency Financing Reporting Act.

Report & Audit

The Authority would have to submit to the Legislature an annual status report on its activities. The report would have to include specific information concerning the achievement of the purposes of the proposed Act. The report also would have to recommend additional legislation the Authority considered necessary or desirable to achieve the Act's purposes.

Each year, the Auditor General or a certified public accountant he or she appointed would have to conduct an audit of the Authority and submit it to the Legislature. In conducting the audit, the Auditor General or CPA would have to have access to all records of the Authority at any time, whether or not they were confidential.

Authority Members & Employees

Authority members and officers and employees of the Authority would be subject to Public Acts 317 or 318 of 1968. (Public Act 317 governs contracts between public employees and public entities. Public Act 318 prohibits conflicts of interest in State contracts.) An authority member or an officer, employee, or agent of the Authority would have to discharge the duties or his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances.

An Authority member could not make, participate in making, or in any way attempt to use his or her position as an Authority member to influence a decision regarding a loan, grant, investment, or other expenditure under the proposed Act to his or her employer.

A member, employee, or agent of the Authority could not engage in any conduct that constituted a conflict of interest, and immediately would have to advise the Authority in writing of the details of any incident or circumstances that could present the existence of a conflict of interest with respect to the performance of the person's Authority-related work or duty.

An Authority member who had a conflict of interest related to any matter before the Authority would have to disclose the conflict of interest before the Authority took any action with respect to the matter. The member would have to refrain from doing all of the following with respect to the matter:

- Voting in the Authority's proceedings related to the matter.
- Participating in the Authority's discussion of and deliberation on the matter.
- Being present at the meeting when the discussion, deliberation, and voting on the matter took place.
- Discussing the matter with any other Authority member.

A member's failure to comply with these requirements would constitute misconduct in office and subject the member to removal.

Construction of the Act

The bill states the following: "This act shall be construed liberally to effectuate the legislative intent and purpose of this act as complete and independent authority for the performance of each act and thing authorized in this act. Powers granted in this act shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers."

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The primary staff support for the Clean Energy Authority would be provided by the Department of Natural Resources. The cost

of staff time and resources is unknown and would depend on the number and complexity of the oil and gas leases in which the Authority had a working interest and the staff support needed for the development of alternative and renewable energy facilities and IGCC facilities.

The Authority would be authorized to issue revenue bonds, which would not affect the credit of the State, and the bonds or notes would not be a debt obligation of the State.

One of the functions of the Authority would be the promotion of the development of oil, gas, and mineral resources. The royalties from extraction of these resources on State-owned land are paid to the Natural Resources Trust Fund and the Game and Fish Protection Trust Fund. These restricted Funds would receive additional revenue of an unknown amount from the collection of royalties. The amount of revenue would depend on the type of material extracted, volume, and market value.

To the extent that the Authority's activities increased the storage of greenhouse gases and other substances through a lease on State-owned land, the State also could receive revenue from leases. Revenue would depend on the terms of the leases. Money collected from storage leases would be deposited into either the Natural Resources Trust Fund or the Game and Fish Protection Trust Fund, as required by law.

Fiscal Analyst: Jessica Runnels

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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.