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HOUSING COMMISSION POWERS

House Bill 4973 with committee
amendment
First Analysis (9-26-95)

Sponsor: Rep. Lyn Bankes
Committee: Urban Policy

THE APPARENT PROBLEM:

Public housing experts say the state law creating and regulating housing commissions is antiquated. Drafted in 1933, it does not reflect the reality of today's public housing climate. Today, say experts, communities no longer can count on an influx of federal money to administer. Instead, local housing officials need to be more creative and flexible, need to find new ways of meeting the need for affordable housing, and need to find new sources of revenue. Unlike in some other states, housing commissions in Michigan are not independent or autonomous government entities. Rather, they are creatures of local units, of cities, townships, and counties. Their powers are strictly limited. They cannot, for example, engage in borrowing. If bonds are to be issued, the local unit must issue them. Legislation has been introduced that would, while maintaining control by local units of government, modernize the operations and financial powers of housing commissions.

THE CONTENT OF THE BILL:

The bill would amend Public Act 18 of the Extra Session of 1933, which allows local units of government to create housing commissions to "purchase, acquire, construct, maintain, operate, improve, extend, or repair housing facilities and eliminate housing conditions which are detrimental to the public peace, health, safety, morals or welfare." The amendments include the following.

-- A housing commission could be a borrower under the act if so empowered by ordinance of the local governing body that created the commission. This would mean the commission could, among other things, issue revenue bonds. Currently, the term "borrower" only applies to a city, village, township, or county operating under the act.

Deeds, mortgages, contracts, leases, purchases, or other agreements regarding real property could be executed in the name of a commission or its incorporating unit, as specified by ordinance or resolution of the governing body. If a commission did act as a borrower, it could loan any amount of the borrowed money to the incorporating unit, which could execute any deed, mortgage, lease, contract, or other agreement with respect to property for which the bonds or notes were issued. If the commission made a loan to a local unit, the unit would have all the powers granted a borrower for securing payment of the loan. The bill also would allow a governing body to transfer property taken under its power of eminent domain to the commission. The transfer would be considered necessary for public purposes and for the benefit of the public. Also, a housing commission would be specifically authorized to use the portion rental payments covering bond payments to be used for other purposes or to support other bonds once the original bonds had been retired.

-- Several provisions from the Municipal Finance Act (MCL 131.1 et al.) regarding the nature of bonds or notes that can be issued and the powers of borrowers would be incorporated into Public Act 18.

-- A housing commission would be specifically authorized to form or incorporate non-profit corporations for any purpose not inconsistent with the purposes for which the commission was formed. The commission could serve as a shareholder or member of a qualified non-profit corporation. The bill also specifically provides that a housing commission is "a public body corporate" and (except as otherwise provided) can sue or be sued in any court of the state.

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-- The bill specifically permits a commission to solicit, accept, and enter into agreements relating to, grants from any public or private source, including the state or federal government or any of their agencies, and permits a commission to carry out any federal or state program related to commission purposes. The bill also would expand the list in the act of persons a commission can hire to include attorneys, accountants, and other professional consultants and would permit them to fix the compensation of officers and employees without the approval of the appointing authority.

-- The property, income, and operations of housing commissions and qualified non-profit entities would be exempt from all taxation by the state or any of its political subdivisions. However, the governing body of a local unit could adopt an ordinance requiring a commission to pay an annual service fee in lieu of all taxes with respect to projects or facilities of the commission or qualified non-profit entities. The fee could not exceed ten percent of the annual shelter rent obtained from the projects or facilities. (The act currently contains a provision specifying how rents should be determined; it says rents must cover certain specified costs, including payments in lieu of taxes.) For the purposes of this provision, a non-profit corporation (or a limited partnership having a non-profit corporation as its sole general partner) would be a qualified non-profit entity if the housing commission owned the non-profit corporation or was its sole member, or if a majority of the non-profit's board were elected and removable by the commission.

-- The bill would permit a member of the housing commission to be removed before the expiration of his or her term for misfeasance, malfeasance, or nonfeasance of duty, following notice and an opportunity to be heard. Currently, the act says "members of the commission may be removed from office by the appointing authority." The bill also would specify that a member of the governing board of an incorporating unit could not be appointed to the commission; the two offices would be considered incompatible. The appointing authority could, however, appoint one member of the governing body to serve as a nonvoting ex officio member of the commission.

-- In cities, villages, townships, or counties (or any combination of those entities) with a population under one million, one member of the housing commission would have to be a tenant of public or

subsidized housing. For existing commissions, the appointment of a tenant would have to be for the next available vacancy. For new commissions, the appointment would make for the next available vacancy after a project of the commission was occupied.

MCL 125.651 et al.

FISCAL IMPLICATIONS:

The bill would have no fiscal impact, according to the House Fiscal Agency. (Fiscal Note dated 9-19-95)

ARGUMENTS:

For:

The aim of the bill is to modernize the operations and financial powers of housing commissions. With the reduction in the federal commitment to public housing, local commissions need to be more creative and more flexible in solving housing problems and creating affordable housing. The current state law is simply outmoded. But the expanded powers will require approval at the local level; the bill is, in that sense, permissive. Under the bill, for example, local housing commissions could be granted the ability to issue bonds for low-income or elderly housing projects, and to be parties to deeds, mortgages, contracts, leases, and other arrangements. A commission also would be able to create a non-profit organization to carry out housing-related activities. It would have more control over employees and their compensation. Other amendments would stabilize membership on commissions, permitting removal only for cause and not, as now, for any or no reason. It would also clarify the currently confusing provisions regarding the payments housing commissions make to communities for their properties in lieu of property taxes. Several other amendments would modernize the 1933 act by importing language regarding bonding from the Municipal Finance Act.

Response:

Some people believe the bill should not mandate that a tenant of a housing commission project should serve on the commission; rather, the matter should be determined locally. The bill would require one member of a housing commission to be a tenant. While this might be good in concept, some housing commissions operate a wide variety of kinds of property (low-income family housing,

senior housing, transitional housing, homeless shelters), and it might not be so simple to represent the various interests by appointing a tenant member.

Against:

Township representatives have expressed concerns about the expansion of powers for housing commissions found in this bill. The bill allows them virtual autonomy. They could issue bonds without the oversight of local elected officials, could write laws (through the resolution process) without public input, and could enter into legal arrangements without the approval of the governing body of the local unit. Yet it is possible some liability will remain with the local unit if things go wrong with housing commission projects. Further, the bill will change the organization and operation of existing housing commissions without local input. For example, provisions regarding who gets appointed, when appointees can be removed, and how much commission staff are paid, are all modified in this bill for all existing commissions. Also under this bill, it will be possible for a commission, or a non-profit group established by a commission, to operate across jurisdictions.

POSITIONS:

Representatives of NAHRO (The National Association of Housing Redevelopment Officials) testified in support of the bill. (9-20-95)

The Michigan State Housing Development Authority supports the bill. (9-20-95)

The directors of the Grand Rapids and Muskegon Housing Commissions testified in support of the bill. (9-20-95)

The Michigan Municipal League has no official position at present. (9-20-95)

Representatives from the Michigan Townships Association indicated their opposition to the bill in its current form. (9-20-95)