



**House
Legislative
Analysis
Section**

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HOUSING COMMISSION POWERS

**House Bill 4973 as enrolled
Public Act 338 of 1996
Second Analysis (7-24-96)**

**Sponsor: Rep. Lyn Bankes
House Committee: Urban Policy
Senate Committee: Finance**

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. A housing project or combined housing project for which obligations could be issued would include a housing project to be purchased or developed by a non-profit entity with the proceeds of a loan from a borrower. The proceeds of obligations and other funds available could be used to make loans for defraying the cost of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing a housing project.

The bill also would allow a governing body to transfer to the commission property taken under its power of eminent domain. 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 of 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.

-- Similarly, a housing commission would be authorized to form or incorporate for-profit corporations, partnerships, and companies for any purpose not inconsistent with the purposes for which it was formed.

-- 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 governing body of an incorporating unit could adopt a resolution requiring that body's approval before a commission could accept or enter into agreements relating to one or more types of grants.

--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 a commission to fix the compensation of officers and employees without the approval of the appointing authority. However, upon the recommendation of the appointing authority, the governing body of the local unit could adopt a resolution either conditioning the establishment of compensation for an officer or employee upon approval of the governing body or adopt a resolution establishing compensation ranges and classifications to be used in fixing compensation.

-- Currently, commission members can receive compensation for actual expenses in an amount determined by the local legislative body. The bill would allow the commission to determine the compensation for actual expenses. However, a local governing body could adopt a resolution establishing limitations on that compensation.

-- A local governing body could, by resolution, request the commission to submit a report itemizing actual expenses paid to commission members and compensation paid to officers and employees. The commission would also have to report any action regarding grants and government programs so as to allow the governing body to exercise its authority to supervise the activities of the commission. (The act already requires a commission to make an annual report of its activities to the governing body of the local unit.)

-- The property, income, and operations of housing commissions and qualified 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 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 qualified entity would be 1) a non-profit corporation (or a limited partnership having a non-profit corporation as its sole general partner) 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; or 2) a for-profit corporation, partnership, or company formed by the commission for the sole purpose of syndicating low-income housing tax credits in connecting with the redevelopment of a housing project that had been owned by the commission, if the commission retained oversight responsibility for the management and operation of the project and the for-profit entity did not engage in any other business activity unrelated to the housing project.

-- An incorporating unit that was receiving a payment in lieu of taxes as of the effective date of the bill would have to agree to accept a payment "in an amount equal to that portion of the payment . . . otherwise due multiplied by the percentage by which the millage rate of all taxing units levying ad valorem property taxes in the incorporating unit for the year in which the payment . . . is due bears to the millage rate levied in 1993 by all taxing units." (Presumably, this means any service fee currently required of a commission or related entity in lieu of property taxes would be reduced by the same percentage that property taxes have been reduced since 1993; generally speaking, Proposal A of 1994 substantially reduced local school operating property taxes.) This provision could not require the increase of any payment previously agreed to.

-- Upon recommendation of the appointing authority, the governing body of the incorporating unit could remove a member of the housing commission before the expiration of his or her term. Currently, the act says "members of the commission may be removed from office by the appointing authority."

-- The bill would require one member of the housing commission to be a tenant of public or subsidized housing. If a commission was operating an occupied project and had no tenant member, a tenant member would have to be appointed for at least one of the next three vacancies after the bill's effective date or within two years after that date, whichever came first. For a commission yet to be created or yet to manage an occupied project, a tenant member would have to be appointed for at least one of the next two vacancies after the first project was occupied or within two years of that date, whichever came first. The bill would require the chief executive officer of the housing commission to send written notice of a commission vacancy to the president

of each resident organization in a rent notice. For a commission with authority for less than 250 units, if no tenant applied for membership on the commission within 60 days after the notice of a vacancy was sent out, the appointing official could appoint a person otherwise qualified under the act to serve as a commission member.

-- The act currently provides that "all claims that may arise with [the] housing commission or projects shall be presented as are ordinary claims against the [local unit]." The bill would make this apply "unless a governing body of the incorporating unit authorizes the execution of agreements regarding real property in the name of the commission," as the bill would permit. The bill also would add language in the section on liability for claims specifying that the section would not preclude an incorporating unit or a housing commission from asserting a defense of governmental immunity to which it could be entitled under law against any claim made against the unit or commission.

-- The bill would repeal several sections of the act that create and describe a board of tenant affairs in a city of one million population or more and would eliminate a provision that established a nine-member housing commission for a city with a population of one million or more (rather than the five-member commission required elsewhere).

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 non-profit and for-profit organizations to carry out housing-related activities. It would have more control over employees and their compensation. 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 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 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.

Analyst: C. Couch

■ 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.