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BILL ANALYSIS

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House Bill 4973 (Substitute S-1 as reported)
Sponsor: Representative Lyn Bankes
House Committee: Urban Policy
Senate Committee: Finance

Date Completed: 5-17-96

RATIONALE

Under a law that was enacted in 1933, a city, village, township, or county may create a housing commission to acquire, construct, and improve housing facilities and projects. The powers of a housing commission are limited by statute. All contracts entered into by a commission must be done in the name of and approved by the governing body of the local unit, and housing commissions may not issue bonds or notes, although local units may sell bonds for housing purposes. In addition, there is no clear statutory authority for housing commissions to create either nonprofit or for-profit entities, which could own and rehabilitate property and generate revenue through the sale of Federal tax credits. Under Federal law, states are allocated a certain amount of tax credits that may be used for private purposes, including housing. Housing authorities then may sell, or syndicate, the credits to private investors; the housing authorities receive income from the sale and the investors apply the credits against their Federal tax liability. In Michigan, however, taking advantage of this investment mechanism apparently is quite cumbersome, because of the narrow authority of housing commissions under the statute. It has been suggested that the financing powers of housing commissions should be broadened and modernized.

CONTENT

The bill would amend Public Act 18 of the Extra Session of 1933, which governs municipal housing commissions, to do the following:

- **Provide that a commission could be a "borrower" for the purposes of issuing bonds or notes under the Act, if empowered to do so by ordinance of the creating governing body.**
- **Specify powers of a borrower under the Act, and prohibit a borrower from issuing bonds that would appreciate or be sold at a discount of more than 10%.**
- **Allow a housing commission to form or incorporate nonprofit corporations and for-profit corporations, partnerships, and companies.**
- **Exempt from State and local taxation property, income, and operations of a housing commission and property of a qualified entity located in the commission's incorporating unit; and define "qualified entity" as either a nonprofit corporation or a for-profit entity formed to syndicate low income housing tax credits.**
- **Permit the governing body of a local unit to adopt an ordinance requiring a commission to pay an annual service fee in lieu of taxes with respect to projects or facilities of the commission or qualified entities.**
- **Require one member of a housing commission to be a tenant of public or subsidized housing.**
- **Repeal sections requiring the creation of a board of tenant affairs for each city, village, or township having a housing commission and one or more housing projects (MCL 125.699-125.704, 125.709d, and 125.709e).**

Commission Borrowing/Contractual Authority

The Act defines "borrower" as the city, village, township, or county operating under the Act. The bill would amend the definition to include a commission created under the Act if empowered by ordinance of the creating governing body to act as a borrower for purposes of issuing bonds or notes under the Act.

The Act specifies that any borrower is authorized to adopt or enact an ordinance providing for the issuance and sale of revenue bonds, and all other appropriate ordinances and resolutions necessary or desirable to effectuate the Act. The bill would authorize any borrower to adopt or enact an ordinance, or a resolution if the borrower were a commission, providing for the issuance and sale of revenue bonds and other appropriate ordinances and resolutions. (The bill would define "ordinance" as either an ordinance of a city, village, township, or county; or a resolution of a commission, to the extent the incorporating unit had granted or empowered the commission to take those actions otherwise required to be taken by the incorporating unit by ordinance.)

If a commission were a borrower, it could loan any amount of the borrowed money to the local unit, which could execute any deed, mortgage, lease, contract, or other agreement with respect to property for which bonds or notes were issued. If the commission made a loan to the local unit, the local unit would have all powers granted under the Act to a borrower for purposes of securing repayment of the loan.

Currently, all deeds, contracts, leases, and purchases entered into by a commission must be done in the name of and approved by the governing body of the city or village. Under the bill, all deeds, mortgages, contracts, leases, purchases, or other agreements regarding real property would have to be executed in the name of the commission or the local unit, as specified by ordinance or resolution of the local unit's governing body. "Contracts or leases regarding real property" would mean contracts to purchase or lease from a third party or other transactions under which rights or possession of real property were acquired, but would not include contracts, management agreements, or leases of that property with tenants or facility managers; contracts or leases with tenants or facility managers would have to be executed by and in the name of the commission.

The governing body of a local unit could transfer property to the commission for use by the commission for a purpose authorized under the Act. The transfer of property, including property taken under the local unit's power of eminent domain, would have to be considered necessary for public purposes and for the benefit of the public.

If an ordinance or resolution of the governing body provided for the execution of agreements regarding real property in the name of the commission, or if a commission were empowered by the local unit to act as a borrower, the commission could sue and be sued with respect to those agreements it executed or obligations it issued. This provision would not affect a limitation provided by the Act or by the terms of an agreement upon the funds available or the pledge made for the payment of a claim against the commission.

<u>Additional Commission Powers</u>

Currently, the Act prescribes the powers of a housing commission, including the power to determine areas of a local unit where housing facilities are needed or where existing housing needs to be eliminated; to purchase, sell, and mortgage property; to control and supervise parks; and to establish and revise rents. The bill further provides that a commission would be a public body corporate, and could do the following:

- -- Sue and be sued in any court of the State.
- -- Form or incorporate nonprofit corporations for any purpose not inconsistent with the purposes for which the commission was formed.
- -- Serve as a shareholder or member of a qualified nonprofit corporation.
- -- Authorize, approve, execute, and file with the Michigan Department of Commerce those documents that were appropriate to form and continue one or more nonprofit corporations.
- -- Form or incorporate for-profit corporations, partnerships, and companies under the laws of this State for any purpose not inconsistent with the purposes for which the commission was formed.

A commission also could solicit, accept, and enter into agreements relating to grants from any public or private source, including the State or Federal government or State or Federal agencies, and carry out any State or Federal program related to the purposes for which the commission was created. The governing body of an incorporating unit could adopt a resolution requiring approval by the governing body before the commission could accept or enter into agreements relating to one or more types of grants.

Tax Exemption

The bill provides that the property, income, and operations of a commission, and property of a "qualified entity" that was located in the commission's incorporating unit, would be exempt from all taxation by the State or any political subdivision. The governing body of a local unit could adopt an ordinance to require 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 10% of the annual shelter rent obtained from the projects or facilities.

Each incorporating unit receiving, as of the bill's effective date, payment in lieu of taxes with respect to a project or facility of the commission or a qualified entity 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 local unit in which the project or facility was located for the year in which the payment in lieu of taxes was due bore to the millage rate levied in 1993 by all taxing units levying property taxes in the incorporating unit. This provision would not require an increase of any payment in lieu of taxes previously agreed to by the incorporating unit.

"Qualified entity" would mean either 1) a Michigan nonprofit corporation or a Michigan limited partnership having a Michigan nonprofit corporation as its sole general partner, if the nonprofit corporation were owned by a commission; a majority of the members of the board of directors of the nonprofit corporation were elected and removable by the commission; or the commission were the sole member of a nonprofit corporation; or 2) a for-profit corporation, partnership, or company formed or incorporated by the commission for the sole purpose of syndicating low income housing tax credits in connection with the redevelopment of a housing project that had been owned by the commission, if the commission maintained oversight responsibility for the management and operation of the project for which low income housing tax credits were syndicated and the for-profit entity did not engage in any other business activity unrelated to the housing project.

Local Unit and Commission Bonding Powers

The Act provides that any borrower may borrow money and issue revenue bonds for the purpose of defraying the cost of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing any housing project or combined projects. The bill specifies that the bonds could be issued as serial bonds, term bonds, or both with maturities and payment or redemption dates fixed by the authorizing resolution or ordinance. The borrower could not issue bonds that appreciated in principal amount in whole or in part or were sold at a discount of more than 10%. The first maturity or required redemption of term bonds could not be more than five years from the issuance date. Bonds sold under the Act, unless otherwise specified, would have to be sold in a manner authorized for obligations under the Municipal Finance Act.

The housing commission Act provides that any borrower also may issue refunding bonds to refund any bonds previously issued by it. The bill would allow a borrower to issue refunding bonds to refund any bonds previously issued by it or its incorporating unit or by a public housing agency, as designated by the U.S. Department of Housing and Urban Development, that was an agency or instrumentality of the borrower or, if the incorporating unit were the borrower, of a commission.

The bill specifies that a borrower issuing notes or bonds under the Act could authorize and enter into an insurance contract, agreement for lines of credit, letter of credit, commitment to purchase obligations, remarketing agreement, reimbursement agreement, tender agreement, or any other transaction to provide security to assure timely payment of any bond or note. A borrower also could pledge and create a statutory lien on one or more of the following for timely payment of the bonds or notes or for payment of any of the obligations described above: the proceeds of additional security provided to assure timely payment of the bonds or notes; proceeds of bonds or notes; revenue derived from the operation of a housing project or combined projects; and rents fixed by a commission to include an amount sufficient to pay principal and interest on bonds issued for a project.

In addition, a borrower could authorize payment of the cost of issuance from the proceeds of the bonds or notes or other funds available including, but not limited to, fees for placement, fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, reimbursement agreements, tender agreements, purchase or sales agreements or commitments, or other agreement to provide security to assure timely payment of obligations.

The bill also would allow a borrower issuing notes or bonds under the Act to authorize or provide for an officer or employee of the borrower, but only within limitations contained in the authorizing ordinance or resolution, to do one or more of the following:

- -- Sell, deliver, and receive payment for bonds or notes.
- -- Refund bonds by the delivery of new bonds or notes, whether or not the bonds or notes to be refunded had matured or were subject to redemption prior to maturity on the date of delivery, if the net present value of the principal and interest to be paid on the refunding bonds would be less than the net present value to be paid on the bonds being refunded.
- -- Deliver notes or bonds, partly to refund notes or bonds and partly for any authorized purpose.
- -- Buy notes or bonds issued and resell those notes or bonds.
- -- Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, dates of issuance, interest payment rates, redemption rights at the option of the borrower or the holder, the place of delivery and payment, and other matters and procedures necessary to complete the transactions authorized.

Currently, a commission is required to fix the rent for dwellings in projects at rates no higher than it finds necessary in order to produce revenues for the payment of principal and interest on bonds issued for the projects; to meet the cost of administration, operation, and maintenance of the projects, including the cost of insurance on the projects or on the bonds issued for them; to create a reserve sufficient to meet the largest principal and interest payments on the bonds; and to make payments in lieu of taxes. The bill would further allow rent rates to be fixed to provide for the creation and funding of a reserve for replacements and capital improvements related to the projects.

The bill provides that after bonds issued for a project had been retired, the rentals fixed by a commission could include an amount no greater than the maximum annual principal and interest that had been due on bonds issued for the project. The commission could use these rental receipts for any purpose for which bonds or notes were issued or to secure bonds or notes issued by the borrower for other projects of the commission.

Housing Projects

The bill specifies that a housing project or combined housing project for which obligations could be issued under the Act, would include a housing project to be purchased or developed by a nonprofit entity with the proceeds of a loan from a borrower.

In addition, the proceeds of obligations issued under the Act and other funds available to an incorporating unit or commission could be used to make loans for defraying the cost of purchasing, acquiring, constructing, improving, enlarging, extending, or repairing a housing project.

Cooperative Financing Agreements

Currently, any two or more borrowers that are to receive a Federal grant or assistance for a housing project or housing facilities, may join or cooperate in the exercise of any power conferred in the Act for the purpose of financing the issuance of bonds, notes, or other obligations and giving security with respect to housing facilities. Under the bill, this provision would not be limited to borrowers that are to receive a Federal grant or assistance.

The bill specifies that a housing project for a cooperating borrower in a cooperative financing arrangement for which obligations could be issued, would include a housing project to be purchased or developed by a nonprofit entity with the proceeds of a loan from the cooperating borrower or agent borrower.

Claims Connected with a Housing Project

The Act provides that all claims that may arise in connection with a housing project must be presented as are ordinary claims against the city or village. Under the bill, this would apply unless the governing body of an incorporating unit authorized the execution of agreements regarding real property in the name of a commission.

The Act specifies that final judgments obtained from those claims may be paid only from the operating revenue of the housing project. The bill provides that final judgments would not be a general obligation of the incorporating unit, and could be paid only from the operating revenue of the housing project or from the proceeds of liability insurance. The bill also states that these provisions would not preclude the incorporating unit or commission from asserting a defense of governmental immunity to which it would be entitled under law against any claim made against the incorporating unit or commission.

Commission Membership

Under the Act, a commission consists of five members appointed by the chief administrative officer of a city or village or by a resolution adopted by the governing body of the local unit. The bill would delete provisions under which the commission consists of nine members in a city with a population of 1 million or more.

The bill provides that one member of the commission would have to be a tenant of public or subsidized housing. If, on the bill's effective date, a commission were managing 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 that date, or within two years after that date, whichever came first. If, on the bill's effective date, a commission did not yet exist or did not yet 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 of the commission was occupied, or within two years after the first project was occupied, whichever came first. Beginning on the bill's effective date, the chief executive officer of the housing commission would have to send written notice of a commission vacancy to the president of each resident organization. The notice would have to be included in the rent notice to each tenant. For a commission with authority for fewer than 250 units, if no tenant applied for membership on the commission within 60 days after notice was sent, the appointing official could appoint a person otherwise qualified to serve as a member if the chief executive officer had proof of the written notice.

Currently, commission members may be removed from office by the appointing authority. The bill provides, instead, that upon recommendation of the appointing authority to the governing body, the governing body of the incorporating unit could remove a commission member before the expiration of his or her term.

The Act provides that a commission may receive compensation for actual expenses incurred in serving as a member in an amount determined by the legislative body of the city or village. Under the bill, the amount would be determined by the commission, but the governing body could adopt a resolution establishing limitations on the amounts of actual expenses that could be paid to a commission member.

The Act also provides that a commission may appoint a director and other employees and officers as necessary. The commission must prescribe the duties of its officers and employees and, with the approval of the appointing authority, may fix their compensation. The bill provides, instead, that the commission could employ and fix the compensation of a director and other employees as necessary. Upon the recommendation of the appointing authority, the governing body of an incorporating unit could adopt a resolution either conditioning the establishment of any compensation of an officer or employee of a commission upon the governing body's approval or establishing compensation ranges and classifications to be used by a commission in fixing the compensation of its officers and employees. The commission would have to prescribe the duties of its officers and employees and transfer to its officers and director those functions and the authority that the commission had prescribed.

The governing body of the incorporating unit, by resolution, could request the commission to prepare and submit a report containing an itemization of actual expenses paid to commission members and of compensation of officers and employees fixed as described above. The commission also would have to report any action taken to solicit, accept, and enter into agreements relating to grants or to carry out a Federal or State program, in a manner sufficient to allow the governing body to exercise its supervisory authority over the commission.

MCL 125.651 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The current State statute does not give local housing commissions the creativity and flexibility they need to solve housing problems and establish affordable housing. While the bill would expand and update the financing powers of housing commissions, local government approval would be required before a housing commission could issue notes and bonds or enter into contracts in its own name. A local unit also could require a commission to obtain its approval before accepting or entering into agreements related to grants. In addition, a local unit could retain control over expenses paid to commission members and compensation paid to commission employees. At the same time, a commission would have clear statutory authority to form nonprofit and for-profit entities. Since these entities, like commissions, would be exempt from State and local taxes, a commission could create a for-profit entity only for the purpose of selling low income housing tax credits in connection with the development of a housing project, and the for-profit entity could not engage in any other business activity. As a result of these changes, local governments could elect to grant more autonomy to housing commissions, and housing commissions would have enhanced opportunities to raise needed funds in order to improve housing conditions in the State.

Legislative Analyst: S. Margules

FISCAL IMPACT

Local units that required a housing commission to pay an annual service fee in lieu of taxes would be partially reimbursed for tax revenues lost from profit entities. The fiscal impact would depend on the degree to which local units granted powers to the housing commissions and the level of participation by profit entities.

Fiscal Analyst: R. Ross