



**House
Legislative
Analysis
Section**

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REVISE MSHDA ACT

**House Bill 5538 as enrolled
Public Act 257 of 2000
Second Analysis (6-9-00)**

**Sponsor: Rep. Paul DeWeese
House Committee: Local Government and
Urban Policy
Senate Committee: Local, Urban and State
Affairs**

THE APPARENT PROBLEM:

For more than 30 years the State of Michigan has demonstrated a commitment to provide more affordable housing opportunities to its low-income citizens through the Michigan State Housing Development Authority, or MSHDA. The agency does not own or manage housing units or projects, but instead accomplishes its work in partnership with local banks, lending institutions, and private developers. It also administers federal housing programs, often in league with the Department of Housing and Urban Development.

Every three years, the act that governs the low-income housing programs offered through MSHDA must be reauthorized in order to update the income eligibility criteria, the low income housing purchase price limits, and to extend the bonding cap, all of which are specified in statute.

Since the statute is reviewed and updated with regularity, there is an opportunity to adjust the agency's mission to comport with federal low-income housing initiatives available through the Department of Housing and Urban Development and other federal programs. In keeping with federal priorities during the current review of the statute that has been undertaken during the past six months, some have proposed that the duties of the resident member who serves on the MSHDA board of directors be clarified. They have also observed that the near elimination of federal programs to build low-income housing in rural areas affords an opportunity, indeed, perhaps an obligation, for MSHDA to enter that market.

To these ends and others, legislation has been introduced to revise the act.

THE CONTENT OF THE BILL:

The bill would amend the State Housing Development Authority Act to do the following:

--require one member of the Michigan State Housing Development Authority (MSHDA) to be a designated resident member (an eligible resident directly assisted by a federal housing program administered through MSHDA);

--define rural housing projects with respect to the low income housing tax credit established under the Internal Revenue Code and administered by MSHDA;

--allow the incorporation of nonprofit housing corporations for the purpose of carrying out programs and oversight responsibilities on behalf of or in conjunction with the U.S. Department of Housing and Urban Development with respect to federal housing programs;

--extend, until November 1, 2002, the \$4.2 billion limitation (which reverted to \$3 billion on November 1, 1999) on MSHDA's outstanding bonds and notes;

--increase, from 55 percent to 60 percent of statewide median gross income, the income limit of individuals for whom 50 percent of the bonds issued to finance single family homes must be made available;

--increase the income and purchase price limits for a mortgage credit certificate for the purchase of existing or new housing units, and for the rehabilitation of low and moderate income housing;

--increase the number of units in multifamily property that may be eligible for a rehabilitation loan; and,

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--add familial status and disability to the act's discrimination provisions.

Authority members and duties. Currently, the authority consists of the director of social services, the director of commerce, the state treasurer, and four people appointed by the governor with the advice and consent of the Senate, and not more than two can be from the same political party. The bill would instead specify that the executive branch members be three heads of principal departments of state government and four people appointed by the governor with the advice and consent of the Senate, excluding the three heads of principal departments and the designated resident member. Under the bill, if federal law requires designation of a resident member on the authority, the number of gubernatorially appointed members, in addition to the three heads of principal departments, would increase from four to five. One of the five gubernatorially appointed members would be the designated resident member. The resident member would have to be an individual "directly assisted" by a federal housing program administered through the authority (meaning that the person was residing in federally-supported public housing or receiving Section 8 tenant-based assistance, not including a state-financed housing assistance program, Section 8 project-based assistance, or Section 8 new construction assistance); and the person would have to be an eligible resident, meaning a person whose name appeared on the lease of the assisted housing who was 18 years of age or older.

The bill also specifies that a person who no longer met those requirements would be removed from the authority for cause, upon the appointment of another person as the resident member.

Currently action may be taken by the authority when a majority of its members vote, unless the bylaws require a larger number. The bill would retain this provision except that to the extent required by federal law, the resident member could only take part, vote on, and exercise the powers of the authority concerning decisions related to the administration, operation, and management of federal public housing programs and Section 8 tenant-based assistance programs. Under the bill the resident member would be prohibited from taking part in, voting on, or exercising the powers of the authority in a matter that uniquely applied to the resident member and was not generally applicable to all residents.

The bill also would delete an outdated reference to staggered terms for the first appointed authority, but would retain the current four-year term.

Allocation plan formula. Under the law, the state's low income housing tax credit authority must be distributed in accordance with the qualified allocation plan, as required by section 42 of the Internal Revenue Code of 1986. Amounts allocated are set aside so that qualified nonprofit organizations receive at least 10 percent, rural housing service at least five percent, and housing projects in eligible distressed areas, at least 30 percent. Under the bill, rural housing projects (rather than services) would receive at least five percent. The bill defines "rural housing projects" to mean proposed or existing housing projects that are: a) located in an area other than a metropolitan county; b) funded by a federal program for the development of rural housing; or c) financed by a loan guaranteed by rural housing services or a successor agency.

Currently the law specifies that the authority may incorporate one or more nonprofit housing corporations for the purposes of owning and acquiring housing projects or housing units under certain conditions. The bill would add language authorizing the authority to incorporate nonprofit housing projects for the purpose of carrying out programs and oversight responsibilities on behalf of, or in conjunction with, the United States Department of Housing and Urban Development with respect to federal housing programs.

Cap on bonds and notes, and earmarking of funds for poor. Under the law the authority cannot have outstanding at any time bonds and notes in an aggregate principal amount exceeding \$4,200,000,000. However after November 1, 1999, that limitation is reduced to \$3,000,000,000. The bill would specify that the limit would drop after November 1, 2002.

House Bill 5538 would change the provision of the law that currently earmarks funding for those whose income is 55 percent or less of the statewide median. Specifically, the provision would read: "With respect to bonds (other than refunding bonds) that are issued to finance single family homes after November 1, 1989, for the first 120 days following the announcement of a program funded by the proceeds of those bonds, 50 percent of the proceeds available to make loans (as determined by the originating lenders) shall be reserved for applicants with gross annual incomes at or below 60 percent (instead of the current 55 percent specified in law) of the statewide median gross income." Under the bill, the authority could, by resolution, waive this

requirement. If it did so, it would be required to advise the House of Representatives and the Senate standing committees with jurisdiction over housing issues five days before it adopted the resolution to waive the requirement.

Mortgage credit certificate program. Under the law, the authority is designated as the administrator of the mortgage credit certificate program for the state, as permitted under section 25 of the Internal Revenue Code of 1986. As administrator of the program, the authority is required to convert at least \$59 million of 1985 federal mortgage revenue bond authority into mortgage credit certificate authority, and then to prepare guidelines that would allow a mortgage credit certificate program to operate through mortgage lenders. The law sets income and housing purchase price limits for eligible applicants and the homes they would purchase, although the limits are different depending on whether a housing unit is located in a distressed area or in another eligible but nondistressed area. The current law also increased the income and purchase price limits after May 1, 1995, in effect specifying two limits: one in effect before that date in each category, and a second higher limit in effect after that date.

House Bill 5538 would increase the current income and purchase price limits and also provide for an orderly increase in those limits over the next three years. Generally under the bill, one limit would be in effect until November 1, 2001, a second in effect until November 1, 2002, and a third after November 1, 2002.

More specifically, to qualify for receipt of a mortgage credit certificate with respect to the acquisition of an existing housing unit, including a residential condominium or mobile home, both of the following would apply: a) the purchase price could not exceed \$99,000 until November 1, 2001, \$102,000 until November 1, 2002, or \$105,000 on or after November 1, 2002; and b) the borrower's family income could not exceed either of the following: a) if the housing unit were located in a metropolitan area, \$52,900 on or before November 1, 2001, \$54,750 from November 2, 2001 until November 1, 2002, and \$56,650 on and after November 1, 2002; or, b) if the housing unit were located in a nonmetropolitan area, \$43,575 on or before November 1, 2002, and after November 1, 2002, the family income limit would increase to the lesser of the HUD nonmetropolitan median income, or \$44,000.

To qualify for receipt of a mortgage credit certificate with respect to the acquisition of a new housing unit,

including a residential condominium or mobile home, both of the following would apply: a) the purchase price could not exceed \$120,000 until November 1, 2001, \$124,000 until November 1, 2002, and \$128,000 on and after November 1, 2002; and b) the borrower's family income could not exceed either of the following: if the housing unit were located in a metropolitan area, \$52,900 on or before November 1, 2001, \$54,750 from November 2, 2001 until November 1, 2002, and \$56,650 on and after November 1, 2002; or, if the housing unit were located in a nonmetropolitan area, \$43,575 on or before November 1, 2002, and after November 1, 2002, the family income limit would increase to the lesser of the HUD nonmetropolitan median income, or \$44,000.

House Bill 5538 specifies, however, that the authority may increase the purchase price limit for existing housing units to cover the cost of improvements to adapt the property for use by disabled individuals or unexpected cost increases during construction. Currently the authority may increase the limits for these purposes, but the purchase price increase is capped at \$3,500. (Although eliminated here, this cap is retained later in the bill.)

Home improvement and rehabilitation. Currently, to qualify for a mortgage credit certificate with respect to the improvement or rehabilitation of an existing housing unit, the borrower's family income cannot exceed the following: a) if the housing unit is located in an eligible distressed area, \$47,900 on or before May 1, 1995, and \$50,055 after that date. If the housing unit is located in an area other than an eligible distressed area, \$41,700 on or before May 1, 1995, and \$43,575 after that date. Under the bill, these income limits would increase, as follows. For a unit located in a metropolitan county, the income limit would be \$52,900 on or before November 1, 2001, \$54,750 from November 2, 2001 until November 1, 2002, and \$56,650 on and after November 1, 2002. For a unit located in a nonmetropolitan county, \$43,575 on or before November 1, 2002. After November 1, 2002, the family income limit would increase to the lesser of the HUD nonmetropolitan median income, or \$44,000.

Long-term loans to finance housing. Under the bill, the authority may make or purchase loans made to an individual purchaser for long-term financing of a newly rehabilitated, newly constructed, or existing housing unit, including a residential condominium unit. To qualify, all of the following apply: a) the borrower's family income could not exceed either of the following: if the housing unit were located in a metropolitan area,

\$52,900 on or before November 1, 2001, \$54,750 from November 2, 2001 until November 1, 2002, and \$56,650 on and after November 1, 2002; or, if the housing unit were located in a nonmetropolitan area, \$43,575 on or before November 1, 2002, and after November 1, 2002, the family income limit would increase to the lesser of the HUD nonmetropolitan median income, or \$44,000.

The purchase price with respect to the unit could not exceed the following: a) for an existing housing unit, the purchase price could not exceed \$99,000 until November 1, 2001, \$102,000 until November 1, 2002, or \$105,000 on or after November 1, 2002; or b) for a newly rehabilitated or a newly constructed housing unit, the purchase price could not exceed \$120,000 until November 1, 2001, \$124,000 from November 2, 2001 until November 1, 2002, and \$128,000 on and after November 1, 2002.

House Bill 5538 specifies that for unexpected cost increases during construction, or improvements to adapt new or existing property for use by disabled individuals, the authority could increase the purchase price limit by an amount sufficient to cover these cost increases, but not to exceed \$3,500.

If an income or purchase price limit prescribed by this provision exceeds an application limit prescribed by the Internal Revenue Code of 1986, then the Internal Revenue Code limit would apply.

Further, before making a loan under this provision authority staff would be required to determine that the borrower had the ability to repay the loan. Finally, the loan made or purchased to finance the acquisition of an existing housing unit could include funds for rehabilitation.

House and Senate notification of more restrictive income and price limits. House Bill 5538 also specifies that except with respect to newly constructed housing units, the authority could by resolution establish, for a length of time the authority considers appropriate, maximum borrower income or purchase price limits more restrictive than those maximum limitations set forth in the act. Under the bill, the authority would be required to advise the appropriate House and Senate standing committees five days prior to adopting a resolution establishing more restrictive maximum borrowing income or purchase price limits.

Multifamily unit loan program. Currently, the authority may make, purchase, or participate in loans, grants, or deferred payment loans to people and families of low and moderate income, so they are able to finance the rehabilitation of residential real property designed for occupancy by not more than four families. The law specifies that for purposes of this program, low and moderate income means people and families whose income does not exceed \$41,700 on or before May 1, 1995, and \$43,575 after that date.

House Bill 5538 would retain this program, but increase the number of families a housing project could serve from not more than four, to not more than 11. Further, the bill specifies that low and moderate income would mean either of the following: a) if the housing unit were located in a metropolitan area, \$52,900 on or before November 1, 2001, \$54,750 from November 2, 2001 until November 1, 2002, and \$56,650 on and after November 1, 2002; or, if the housing unit were located in a nonmetropolitan area, \$43,575 on or before November 1, 2002, and after November 1, 2002, the family income limit would increase to the lesser of the HUD nonmetropolitan median income, or \$44,000.

The law also specifies the maximum principal loan amounts for home improvement loans: \$25,000 for residential structures containing one dwelling unit, and \$12,000 per dwelling unit for residential structures containing two to four dwelling units. In contrast, House Bill 5538 would retain principal loan amount limits, but the bill sets a maximum of \$25,000 for a residential structure containing one dwelling unit, unless the loan is made in conjunction with additional money provided by a municipality or nonprofit community-based organization, in which case a loan for a residential structure containing one dwelling unit would be \$35,000. Further, House Bill 5538 would increase from \$12,000 to \$15,000 the improvement loan limit per dwelling unit for a residential structure containing two to 11 (rather than four) dwelling units. It also specifies that a structure would not have to be of a minimum age to be eligible for rehabilitation under this provision.

Prohibit discrimination in occupancy. Under current law, the occupancy of housing projects and residential real property assisted under the act is required to be open to all regardless of sex, race, religion, color, national origin, age, or marital status. House Bill 5538 would retain these categories and add two others:

familial status, and disability. The law states, however, that this provision does not apply in certain senior housing programs, with respect to the age provision only. In these same instances, House Bill 5538 would retain the exemption for age, and also exempt the proposed familial status provision.

Throughout the bill, references to the Department of Commerce would be replaced by references to the Department of Consumer and Industry Services. Likewise, throughout the bill the references to sections 25 and 42 of the Internal Revenue Code are clarified by specifying the Internal Revenue Code of 1986.

MCL 125.1421 et al

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would increase the MSHDA bond cap from its current level (as of November 1, 1999) of \$3 billion to \$4.2 billion. The increased cap would allow for the issuance of additional bonds and notes in the future above the level currently allowed. A future increase in the overall level of bond indebtedness above \$3 billion would bring additional debt service costs not currently authorized. However, the fiscal impact of this provision is indeterminate at this time, as MSHDA is operating below the \$3 billion current law cap. (5-8-00)

The Senate Fiscal Agency notes the bill would have no fiscal impact on state or local government. (5-17-00)

ARGUMENTS:

For:

For more than 30 years the State of Michigan has demonstrated a commitment to provide more affordable housing opportunities to its low-income citizens through the Michigan State Housing Development Authority, or MSHDA. Indeed, during committee testimony the partnership of banks and national low-income housing development consortia who work with MSHDA asserted the ongoing professionalism of the agency's staff, and noted the high regard with which it is regarded among agencies of its kind throughout the country. This legislation will allow MSHDA to continue its mission. It is necessary in order to update the income eligibility and housing purchase price limits, limits which are cast in statute and which must periodically be raised by the legislature, customarily every three years. It would also allow more housing development in impoverished

rural areas of the state, since it would increase from five percent, to 10 percent, the proportion of the state's low income housing tax credit authority that could be directed to rural housing projects.

Against:

Thirty years ago when MSHDA was created, the agency was intended to spur the development of housing for low-income people. Now the state authority is in the business of subsidizing housing for people who are hardly destitute; those who could, indeed, be regarded as middle-class. Under the statute, when MSHDA collects the proceeds from its bond sales, priority is to be given for low-income applicants for 120 days. Earlier versions of the bill would have weakened that prioritizing custom, and inserted 60 days, instead. In the final version of the bill, the 120-day period was reinserted, but a waiver of this provision is allowed under the bill. If the waiver is adopted by the authority's board, more of the state housing authority's limited pool of funds could be directed toward higher-income families.

Response:

According to House committee testimony, the average income of MSHDA's low-income clients is near \$25,000, and less than five percent of the agency's loans are made to people who earn more than \$40,000. MSHDA's mission was, and remains, to provide affordable housing opportunities. It does that through home improvement loans, single family home mortgages, multiple-family home loans, and also by administering a broad variety of federal programs. An earlier version of the bill proposed changing this provision from 120 to 60 days, during which a portion of the authority's funds are earmarked for those with incomes at or below 55 percent (soon 60 percent when the bill is enacted) of the statewide median. This seems to dilute the agency's mission, but it does not. According to committee testimony, the 120-day restriction unintentionally, if counter-intuitively, serves to thwart the program for which it is designed, since it denies the agency the flexibility it needs to enter the market when interest rates are lowest. Locked into higher rates than could be available, the agency must pass those higher rates along to its clients.

Against:

According to the Mackinac Center for Public Policy in an article entitled "Don't Expand State Housing Program" that appeared in the *Detroit News* (5-4-00), the Michigan State Housing Development Authority is a state agency that sells bonds and uses the proceeds to provides loans to developers who erect low-income

housing and provides subsidies in the form of loans and mortgage credit certificates to individuals who buy homes. While this is a laudable purpose, the center points out that MSHDA lends its money for low-income housing projects that the private sector would finance anyway. In doing so, the agency uses its tax-free government status to compete with standard, taxpaying for-profit lenders and subsidizes well-off developers with loans at artificially low rates of interest. Further, the agency's programs do not substantially increase the stock of low-income housing. For example, the private sector provides about 93 percent of the low-income housing in Detroit.

Against:

When this legislation passed the House, it contained a conflict of interest provision that would have prohibited all members of the state housing authority's board from taking part in, voting on, or exercising the powers of the authority, in any matter that uniquely applied to the member. Thus, the legislation was clear that all conflicts of interest were to be declared, and that members were required to abstain from votes on matters that affected their financial interests. The Senate limited this conflict of interest standard only to the designated resident member. This is blatantly unfair and inequitable treatment. Further, the Senate-passed version of the bill sets constraints on matters the resident member of the board may consider. These constraints will serve to silence the voice of that member who speaks directly on behalf of those whose lower incomes make them eligible for housing. The voice of the poor will go unheard, and as some have suggested, the designated resident member will be a second-class member of the state housing authority's board.

Analyst: J. Hunault

■ 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.