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BILL ANALYSIS

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Senate Bill 1341 (as enrolled) **PUBLIC ACT 535 of 2004**
House Bill 6077 (as enrolled) **PUBLIC ACT 549 of 2004**
Sponsor: Senator Patricia L. Birkholz (S.B. 1341)
Representative Steve Tobocman (H.B. 6077)
Senate Committee: Local, Urban and State Affairs
House Committee: Local Government and Urban Policy

Date Completed: 1-27-05

RATIONALE

The Michigan State Housing Development Authority (MSHDA) finances below-market loans to rental housing developers and home buyers through the sale of tax-exempt and taxable bonds and notes to private investors. A provision in the State Housing Development Authority Act lowered the amount MSHDA was permitted to sell in bonds from $4.7 billion to $3.0 billion in November of 2002. Additionally, the income and housing price limits used by the Authority to determine whether buyers and homes qualify for MSHDA loans were not increased since 2002. Some people believed that the amount of outstanding bonds MSHDA is allowed to have should be increased to its previous level, and that the Authority's income and purchase price limits should be raised. Additional suggestions included expanding MSHDA's ability to make loans to the developers of residential housing located in distressed areas, and permitting the financing of multifamily housing for students.

CONTENT

Senate Bill 1341 amended the State Housing Development Authority Act to raise the Authority's bond limit; permit MSHDA to finance multifamily housing for students, and make other changes concerning multifamily housing loans; revise the loan program for effectively treatable areas; and require MSHDA to review loans with the Michigan Broadband Development Authority.

House Bill 6077 amended the Act to increase the income limits for those seeking loans under the mortgage credit certificate program to purchase or rehabilitate a home, or obtain other loans through the Authority; revise purchase price limits; increase the maximum amount of home improvement loans; revise criteria for multifamily housing project loans; and delete provisions regarding the labor of prospective purchasers.

Senate Bill 1341

Overview

The bill does the following:

-- Allows MSHDA to have up to $4.2 billion in outstanding notes and bonds until November 1, 2007, when the amount will revert to $3.0 billion, subject to certain exclusions.
-- Reduces from 120 to 60 days the time during which 50% of the proceeds from a single-family bond issue must be reserved for applicants with incomes at or below 60% of the statewide median income.
-- Allows MSHDA to finance multifamily housing for students, with the approval of the college or university the students attend.
-- Eliminates a required allocation of units under the so-called Multifamily Pass Through Program to people meeting certain income levels.

-- Permits nonprofit housing corporations to qualify for long-term financing under the Pass Through Program.
-- Allows MSHDA to waive fees for a limited dividend housing association wholly owned by a 501(c)(3) nonprofit organization, and exempts such an association from the $25 million outstanding loan limitation in the Pass Through Program.
-- Allows MSHDA to establish an annual fee and administrative fees in the Pass Through Program.
-- Makes changes in the loan program for effectively treatable areas (ETAs).
-- Requires MSHDA to conduct an annual review of all loans, financial instruments that require repayment, or lines of credit with the Michigan Broadband Development Authority.

Outstanding MSHDA Obligations

Under the Act, until November 1, 2002, MSHDA was allowed to have outstanding bonds and notes in the aggregate principal amount of up to $4.2 billion, excluding:

-- The principal amount of bonds and notes issued to refund outstanding bonds and notes.
-- The principal amount of bonds and notes that appreciated in principal amount, except to the extent of the principal amount of the bonds and notes payable at such time.
-- The principal amount of notes and bonds representing an original issue discount, if any.

On November 1, 2002, this amount was reduced to $3.0 billion. The bill reinstates the $4.2 billion cap until November 1, 2007, subject to the same exclusions. The bill also excludes the aggregate principal amount of bonds and notes issued on or before November 1, 2007, that is outstanding on that date, and that exceeds $3.0 billion.

Single-Family Homes

Under the Act, with respect to bonds, other than refunding bonds, issued to finance single-family homes, for a certain number of days following the announcement of a program funded by the proceeds of those bonds, 50% of the proceeds available to make loans must be reserved for applicants with gross annual incomes at or below 60% of the statewide annual income. The Authority may, by resolution, waive this requirement. The Authority must advise the House of Representatives and Senate standing committees with jurisdiction over housing issues five days before adopting a resolution waiving the requirement.

The bill shortened from 120 days to 60 days the period during which MSHDA must reserve 50% of the bond proceeds for loans to applicants meeting the income level described above.

Multifamily Pass Through Loans

Under what is commonly called the Multifamily Pass Through Program, if a MSHDA resolution authorizing the issuance of notes or bonds provides that they are limited and not general obligations of the Authority, are not secured by the capital reserve capital account, and are secured solely by revenue and property derived from or obtained in connection with the housing project, MSHDA must use the proceeds of those notes or bonds to make loans directly, or indirectly by a loan through a mortgage lender, a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, limited dividend housing association, mobile home park corporation, mobile home park association, or public body or agency for the construction, rehabilitation, and/or long-term financing of any of the following:

-- Multifamily housing projects for low income or moderate income persons.
-- Multifamily housing projects in eligible distressed areas in which at least 20% of the dwelling units are allotted to individuals of low or moderate income (within the meaning of a former section of the Internal Revenue Code) and in which not more than 80% of the dwelling units are available for occupancy without regard to income.
-- Social, recreational, commercial, or communal facilities to serve and improve the residential area in which a MSHDA-financed multifamily housing project is located or is planned to be located.

Under the bill, MSHDA also may use Pass Through Program funds to finance multifamily housing projects for students.

The bill deleted a category in which specific percentages of the dwelling units had to be allotted to people with certain income levels or the elderly and up to 50% could be available without regard to income. (This category included multifamily housing projects in which at least 20% of the dwelling units were allotted to individuals of low or moderate income; at least 15% were allotted to people and families whose gross household income did not exceed 125% of the higher of either the median income for a family in the State or the median income for a family within the nonmetropolitan county or metropolitan statistical area (MSA) in which the housing project was located, or to the elderly; at least 15% were allotted to people and families whose gross household income did not exceed 150% of the median family income for a family in the State or the median income for a family within the nonmetropolitan county or MSA in which the housing project was located, or to the elderly; and not more than 50% of the dwelling units were available for occupancy without regard to income.)

Rehabilitation Projects

For a rehabilitation project to qualify for the Pass Through Program, the rehabilitation expenditures with respect to the project must equal or exceed 30% of the portion of the cost of acquiring the building and equipment financed with the proceeds of the notes or bonds issued to acquire or rehabilitate the project. For a project located in an eligible distressed area, the amount of rehabilitation may be less than 30% if MSHDA determines that the likely benefit to the community or the proposed residents of the project merits the use of this financing source. The Authority may not provide long-term financing for a project with Program funds unless the project is constructed or rehabilitated in anticipation of MSHDA financing, the construction or rehabilitation is undertaken with Authority financing, or long-term financing is being provided with respect to a housing project for which regulatory or contractual restrictions assuring occupancy for some or all of the units by families or people of low or moderate income are subject to termination within a two-year period following the acquisition of the housing project.

The bill also allows MSHDA to provide long-term financing with Program funds for a housing project that is to be owned and operated by a nonprofit housing corporation qualified under Section 501(c)(3) of the Internal Revenue Code (IRC).

Fees & Qualifications

A borrower seeking to qualify for a Pass Through Program loan from MSHDA must file an application and include an application fee equal to the greater of $4,000 or 0.0005 multiplied by the principal amount of the notes or bonds being requested. The Authority may waive the fee when the owner of a housing project is or will be a 501(c)(3) nonprofit housing corporation in an eligible distressed area. Under the bill, the Authority also may waive the fee for a limited dividend housing association wholly owned and controlled by one or more nonprofit corporations qualified under Section 501(c)(3).

Under the Act, a borrower and any person related to the borrower (as defined in Section 144(a)(3) of the IRC) may not have outstanding loan commitments under the Program that total more than $25.0 million or the amount of financing approved for a single multifamily housing project, whichever is greater. This does not apply to a borrower that is a nonprofit housing corporation qualified under Section 501(c)(3). The bill also allows a limited dividend housing association that is wholly owned and controlled by one or more 501(c)(3) nonprofit corporations to have outstanding loans exceeding this limit. The exemptions under the bill refer to a nonprofit housing corporation or a limited dividend housing association that may borrow money from MSHDA without an allocation of the State volume limitation.

The Act requires a borrower to pay a fee, expressed as a percentage of the principal, upon the issuance of any notes or bonds to finance a housing project. Under the bill, the fees must be established by the Authority, subject to the existing limits.

The bill also allows MSHDA, at its sole discretion, to establish an annual fee, or other administrative fees, to be paid by the borrower during the term of the loan. All or any portion of the fees due to the Authority must be paid in annual or semiannual installments, as determined by MSHDA, after the date upon which the notes and bonds are issued to finance the related housing project.

Transfer of Ownership

The Act allows a borrower to sell, refinance from a source other than MSHDA, or resyndicate a housing project at any time, subject to any rights of holders of any notes or bonds issued to finance a multifamily housing project under the Pass Through Program, if the owner of a multifamily housing project financed by MSHDA notes or bonds provides evidence that the new owner of the multifamily housing project is an eligible borrower under the Act and the exemption from Federal income taxation of interest on the notes or bonds issued to finance the multifamily housing project will not be impaired as the result of a sale, refinancing, or resyndication. There may not be a prepayment penalty or fee required for the sale, refinancing, or resyndication in addition to any prepayment penalty or fee owing to the holders of notes or bonds issued by MSHDA to finance a multifamily housing project.

The bill requires the owner to pay all MSHDA fees before or concurrently with the sale, refinancing, or resyndication.

Student Housing

Under the bill, a transfer of student housing ownership must be approved by a resolution of the board of trustees for the college or university that approved the initial financing. The Authority may not make a financing commitment for a housing project unless the board of trustees of the college or university from which a majority of students are anticipated to be residents of the housing project adopts a resolution.

The Act requires that the owner of a housing project financed by MSHDA report to the Authority the age, race, family size, and average income of tenants (as well as other information). Under the bill, this does not apply to student housing.

Beginning on the bill's effective date, a person or entity who proposes a student housing project must cooperate with the college or university from which the majority of the tenants are proposed to be drawn, by using its best efforts to communicate with the college or university regarding the location of and the need for the project. If, in MSHDA's judgment, the person or entity proposing the project does not communicate with the college or university regarding location and need, the Authority may deny financing for the project.

Effectively Treatable Area

The Act had allowed MSHDA to make a loan to any person or entity, whether for profit or not for profit, for the construction or rehabilitation, and for the long-term financing, of a four- to 30-unit housing project located in an ETA, if the project met the 20-50 test established by Section 142 of the IRC. Under the bill, the Authority may make a loan to any person or entity, whether for profit or not for profit, for predevelopment costs, or for the construction or rehabilitation and for the long-term financing of a two- to 49-unit housing project located in an effectively treatable area, if the project meets the 20-50 or 40-60 test established in Section 142 of the IRC. For rehabilitation of a housing project in an ETA by more than one owner, the 20-50 or 40-60 test may be met on an aggregate basis. (Under the IRC, the 20-50 test is satisfied when at least 20% of residents earn less than 50% of area median gross income. The 40-60 test is satisfied when 40% of residents earn less than 60% of the area median gross income.)

The Act had defined an ETA as an area for which MSHDA had received a neighborhood partnership plan from a municipality or neighborhood organization, or both. Under the bill, an ETA is an area that includes or is in close proximity to a downtown or traditional commercial center and for which the Authority has received a neighborhood partnership plan from a municipality and/or a neighborhood organization. As previously required, the plan must establish as a goal that at least 75% of the property in the area will be brought to safe and sanitary condition, and enable MSHDA to determine that available private, public, and Authority resources will be combined in such a manner as to assure that a majority of the housing in the area will be brought to safe and sanitary condition.

Previously, to qualify as an ETA, an area had to be in a city or township with a population of at least 10,000. The bill requires, instead, that an area be a "qualified local governmental unit" as defined in Section 2 of the Obsolete Properties Rehabilitation Act (which lists the criteria for eligibility under that Act) or a county seat. The bill retains the requirement that an area also be either within a census tract having a serious housing need or in an area that meets specific criteria regarding State equalized valuation, poverty rate, average income, and overcrowded or underutilized housing units.

Broadband Development Review

The bill requires MSHDA to conduct an annual review of all loans, financial instruments that require repayment, or lines of credit with the Michigan Broadband Development Authority. The review must contain an analysis of the Michigan Broadband Development Authority's ability to repay all loans, financial instruments that require repayment, and lines of credit with MSHDA and the amount and payment schedule of all current loans, financial instruments that require payment, and lines of credit with MSHDA.

The review also must contain an analysis of the number of MSHDA-assisted or –financed developments and homes purchasing high-speed internet connections at substantially reduced rates as a direct result of loans from the Broadband Development Authority, as specified by the memorandum of understanding between that Authority and MSHDA.

House Bill 6077

Overview

The bill increases the income limits for borrowers under the mortgage credit certificate program; purchasers of one- to four-unit housing; and low- to moderate-income people rehabilitating housing. The bill also does the following:

-- Revises the purchase price limit in the mortgage credit certificate program, and for financing the purchase by individuals of one- to four-unit housing.
-- Revises the criteria for multifamily housing projects.
-- Increases the maximum principal amount of home improvement loans.
-- Deletes provisions concerning the labor of prospective purchasers.

Under the bill, the Act's references to the "Internal revenue code" mean the Federal Income Tax Act of 1986, and the "Internal revenue code of 1954" means the Act as written the day before the 1986 Act took effect.

Income Limit

Under the Act, a borrower's income may not exceed a certain limit if the borrower is to qualify for a loan under the mortgage credit certificate program for the acquisition, or for the improvement or rehabilitation, of an existing housing unit. The limit also applies to the long-term financing of an existing, newly constructed, or newly rehabilitated one- to four-unit housing unit, including a residential condominium.

Previously, the income limit was $56,650 for a unit located in a metropolitan county. For a unit located in a nonmetropolitan county, the limit was $44,000 or the U.S. Department of Housing and Urban Development (HUD) nonmetropolitan median income, whichever was less.

Under the bill, the borrower's family income must not exceed the following:
-- For eligible distressed areas, $69,800 until June 1, 2006; $72,250 until November 1, 2007; and $74,750 on an after November 1, 2007.
-- For any other area, $60,700 until June 1, 2006; $62,800 until November 1, 2007; and $65,000 on and after that date.

Mortgage Credit Certificate Program

The Authority is designated as the administrator of the mortgage credit certificate program for the State as permitted by Section 25 of the Internal Revenue Code, and must prepare guidelines to allow for the implementation of a mortgage credit certificate program through mortgage lenders. The Act sets limits on both the purchase price and the borrower's family income.

Previously, to qualify for a mortgage credit certificate with respect to the acquisition of an existing housing unit, including a residential condominium or mobile home, the purchase price of the unit could not exceed $105,000. To qualify for a mortgage credit certificate with respect to the acquisition of a new housing unit, including a residential condominium or mobile home, the purchase price could not exceed $128,000.

The bill, instead, allows limits the purchase price of a new or existing unit to three times the income limit.

As described above, the bill increases the limit on the borrower's family income with respect to the acquisition of a new or existing housing unit, or the improvement or rehabilitation of an existing unit.

<u>One- to Four-Unit Housing</u>

The Act had allowed MSHDA to 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 as it is defined in the Condominium Act. The purchase price of the unit could not exceed $105,000 for an existing unit or $128,000 for a newly rehabilitated or constructed housing unit.

Under the bill, MSHDA may make, purchase, or participate in loans made to individual purchasers for acquisition and long-term financing of newly rehabilitated, newly constructed, or existing one to four-unit housing units, including a residential condominium unit as defined in the Condominium Act. The purchase price may not exceed: three times the income limit with respect to a one- or two-family unit; three-and-a-half times the income limit with respect to a three-family unit; or four times the income limit with respect to a four-family unit.

The bill also revised the borrower's income limit, as described above.

<u>Property Improvement Loans</u>

Section 44a of the Act authorizes MSHDA to make loans for the rehabilitation of residential property, and sets a limit on the principal amount of home improvement loans. The Authority may make, purchase, or participate in loans, grants, or deferred payment loans to persons and families of low and moderate income to finance the rehabilitation of residential real property designed for occupancy by a limited number of families that is owned or is being purchased by one or more persons or families of low and moderate income. The bill raised the occupancy limit from 11 to 24 families.

For the purposes of these loans, grants, or deferred payment loans, "persons and families of low and moderate income" meant persons and families whose family income did not exceed either $56,650, in a metropolitan area; or the lesser of the HUD nonmetropolitan median income or $44,000, for housing units located in a nonmetroplitan area. For those housing units located in a nonmetropolitan area, the Act allowed MSHDA by resolution to establish, for a length of time it considered appropriate, more restrictive maximum family income limits, and required MSHDA to advise the appropriate House and Senate standing committees five days before adopting the resolution.

Under the bill, "persons and families of low and moderate income" means those whose family income does not exceed the limit described above.

Section 44a also allows MSHDA, without regard to the income of the owners or occupants of residential rental property, to make, purchase, or participate in loans, grants, or deferred payment loans for the rehabilitation of residential rental property located in areas of chronic economic distress and moderate cost residential rental property located elsewhere in the State.

Under this section, the principal loan amount for a home improvement loan, exclusive of finance charges, previously was $25,000 for a residential structure containing one dwelling unit, unless the loan was made in conjunction with additional money provided by a municipality or nonprofit community-based organization, in which case the limit was $35,000. For a residential structure containing two to 11 dwelling units, the maximum principal loan amount was $15,000 per dwelling unit. Under the bill, the limit is $50,000 for a residential structure containing one dwelling unit (subject to the same exception for a loan made in conjunction with additional money from a municipality or nonprofit organization). The maximum amount is

$25,000 per dwelling unit for a residential structure containing two to 24 units.

Housing Projects

The Act authorizes MSHDA to make loans to a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation or association, or mobile home park corporation or association, or to a public body or agency for the construction or rehabilitation, and the long-term financing, of housing for low income or moderate income people and or housing projects meeting specific criteria. Previously, these included a multifamily housing project meeting the 20-50 or 40-60 test established in Section 142 of the Internal Revenue Code if the following criteria were met:

-- At least 15% of the dwelling units were allotted to persons and families whose gross household income did not exceed 125% of the higher of either the median income for a family in the State or the median income for a family within the nonmetropolitan county or MSA in which the housing project was located, or the elderly.
-- At least 15% of the dwelling units were allotted to persons and families whose gross household income did not exceed 150% of the median income for a family in the State or the median income for a family within the nonmetropolitan county or MSA in which the housing project was located, or the elderly.
-- Not more than 50% of the dwelling units were available for occupancy without regard to income.

The bill deleted this category of housing projects.

Under the bill, a multifamily housing project is eligible to receive loans if it meets the 20-50 or the 40-60 test established in Section 142 of the IRC, and the remaining dwelling units are available for occupancy without regard to income. The bill removed a requirement that the project be located in an eligible distressed area.

Sale of Mortgaged Units

Under the Act, while a MSHDA loan to a nonprofit housing corporation or a limited dividend housing corporation is outstanding, a sale by the housing corporation, or a subsequent resale, is subject to approval by the Authority. The bill allows, rather than requires, MSHDA to provide in its rules concerning these sales and resales that the price of the housing unit sold, the method of making payments after the sale, the security afforded, and the interest rate, fees, and charges to be paid must be at all times sufficient to permit the Authority to make payments on its bonds and notes and to meet administrative or other costs of the authority in connection with the transactions.

Previously, upon the sale by a nonprofit housing corporation, limited dividend housing corporation, mobile home park corporation, or mobile home park association of a housing unit to an individual purchaser of low or moderate income or to an individual purchaser without regard to income, if the unit was located in an eligible distressed area, the housing unit had to be released from the mortgage running from that corporation or association to MSHDA, and the mortgage had to be replaced by one running from the individual purchaser to the Authority. The bill deleted this requirement.

Credit for Labor

Previously, the Act had required MSHDA to encourage nonprofit housing corporations and limited dividend housing corporations engaged in construction or rehabilitation with MSHDA loans to use the labor of prospective individual purchasers of low or moderate income in the construction or rehabilitation of the housing units involved. The value of the labor of the prospective purchasers had to be used to reduce the project costs of the housing units involved. The bill deleted these requirements.

The bill also deleted a provision that, in the construction of housing units to be sold to the individual purchasers of low or moderate income at a price not to exceed $12,000, the individual purchasers could be required to perform, in a manner and under conditions to be specified by MSHDA, a minimum number of hours of labor. The value of the labor had to be credited to the purchase price of the unit.

MCL 125.1432 et al. (S.B. 1341)
125.1411 et al. (H.B. 6077)

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 income and purchase price limits in the State Housing Development Authority Act had not been increased for several years, and, as a result, did not reflect changes in income and housing prices that occurred during that time. Raising the income limit allows MSHDA to lend money to people whose income has increased to the point at which they were no longer eligible for Authority loans, yet still did not qualify for traditional financing. Raising the purchase price limit reflects the increased cost of buying a home in Michigan. In addition, these changes will help accommodate the needs of residents of urban areas, where prices are higher, and may help prevent urban sprawl. Raising the bond limit will give MSHDA enough funds to continue its current levels of financing until 2007. Since the bond limit was reduced from $4.2 billion to $3.0 billion on November 1, 2002, MSHDA was left with less money to lend out to residents and developers to finance low-cost housing.

Additionally, by allowing MSHDA to finance student housing with the approval of the local college or university, the bills will help promote mixed use development. The bills also will make it easier for developers to provide market-rate housing by authorizing MSHDA to make loans for the development of residential housing located in distressed areas for sale to people without regard to their income, and deleting some of the lending requirements for multifamily projects.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

Senate Bill 1341

The extension of the sunset on the bonds will have no fiscal impact on the Michigan State Housing Development Authority.

House Bill 6077

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Maria Tyszkiewicz

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