

Legislative Analysis



SUPPORTIVE HOUSING PROPERTY TAX EXEMPTION

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 641 as reported from House Committee

Sponsor: Sen. Mark Jansen

House Committee: Intergovernmental and Regional Affairs

Senate Committee: Finance

First Analysis (10-14-09)

BRIEF SUMMARY: By eliminating a tie-bar to a bill that was not enacted, the bill would allow a previously-enacted property tax exemption for supportive housing property to take effect. Supportive housing property essentially is scattered-site housing owned by a nonprofit organization and occupied by low-income individuals with disabilities.

FISCAL IMPACT: The bill would have no additional fiscal impact in the sense that it allows already enacted legislation to take effect by removing a tie-bar.

The tax exemptions authorized in the 2008 legislation allow affected property to be exempt from locally levied mills (usually 18 mills) for school operating purposes. Such exemptions increase expenditures from the School Aid Fund.

THE APPARENT PROBLEM:

Public Acts 454, 455, and 456 of 2008 were enacted to exempt supportive housing property from the tax levied by a local school district for school operating purposes. Supportive housing property essentially is scattered-site housing owned by a nonprofit organization and occupied by low-income individuals with disabilities.

To claim the tax exemption, a property owner must obtain a certificate from the Michigan State Housing Development Authority (MSHDA) and file a notification with the local taxing assessor.

The legislation amending the State Housing Development Authority Act, however, was tie-barred to a bill that was not enacted. As a result, that amendment has not taken effect and the owners of supportive housing property have not been able to obtain certificates from MSHDA.

THE CONTENT OF THE BILL:

Public Act 456 of 2008 was part of a package of three acts (along with Public Acts 454 and 455 of 2008) enacted to exempt supportive housing property from the tax levied by a local school district for school operating purposes. PA 456 added a Chapter 3B to the State Housing Development Authority Act.

Senate Bill 641 would amend Public Act 456 of 2008 to remove an enacting section tie-barring the bill that created that act to two other bills in the 2007-08 legislative session.

One of those two bills was not enacted, which has prevented Public Act 456 from taking effect. As a result, owners of supportive housing property have not been able to obtain property tax exemption certificates from the Michigan State Housing Development Authority (MSHDA).

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The bill that was not enacted, House Bill 5438, proposed to exempt supportive housing property from the General Property Tax Act and subject it instead to a new specific tax. Only the bills allowing school operating tax exemptions were passed. (See Background Information.)

The new Chapter 3B created by Public Act 456 requires the owner of supportive housing property to file a notification of that status with the local assessing officer. The notification must be in the form of an affidavit and must be submitted first to MSHDA for certification. The certified notification must be filed with the local assessing officer before November 1 of the tax year before the exemption is to begin. The Authority must certify property as supportive housing property on a first-come, first-served basis. As a rule, not more than 25 percent of the number of living units certified for a year may be in a single county.

MCL 125.1459-125.1459b

HOUSE COMMITTEE ACTION:

The members of the House Committee on Intergovernmental and Regional Affairs reported out the Senate-passed version of the bill without amendments.

Note: The bill is identical to House Bill 4758 which was reported from the Intergovernmental and Regional Affairs earlier in the legislative session. House Bill 4758 passed the House on May 5, 2009 and awaits action in the Senate Finance Committee.

BACKGROUND INFORMATION:

Public Act 454 of 2008 amended the General Property Tax Act to exempt supportive housing property from the tax levied by a local school district for school operating purposes to the extent provided under the Revised School Code, if the property owner claims an exemption by filing an affidavit with the local tax collecting unit.

Public Act 455 of 2008 amended the Revised School Code to exempt supportive housing property from the mills levied for school operating purposes, and allowed the board of a school district to exempt supportive housing property from some or all of the additional mills that the board is authorized to levy.

Public Act 456 of 2008 adds Chapter 3B to the State Housing Development Authority Act. Public Act 456 defines "supportive housing property" as property that meets all of the following requirements:

- The property is owned by an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.
- All of the living units are occupied by one or more people each of whom has an income at or below 30 percent of the area median income and individually receives services for at least one hour per month either directly from or contracted for by an organization exempt from taxation under Section 501(c)(3), including mental health, substance abuse, counseling, and assistance with daily living.
- The property consists of not more than six individual living units.

Liberty Hill v Livonia In April 2008, the Michigan Supreme Court addressed the issue of a property tax exemption for residential property owned by a charitable organization and leased by it to low-income individuals or individuals with disabilities under traditional lease agreements (*Liberty Hill Housing Corporation v City of Livonia*, 480 Mich 44). Liberty Hill Housing Corporation requested the City of Livonia to grant a property tax exemption for five of its houses under Section 7o(1) of the General Property Tax Act (MCL 211.7o(1)). That section creates a property tax exemption for property "owned and occupied" by a nonprofit charitable institution while occupied by that charitable institution solely for the purposes for which it was incorporated.

When the city denied its request, Liberty Hill appealed to the Michigan Tax Tribunal, which agreed with the city. The Tribunal concluded that Liberty Hill did not "occupy" the houses where its lessees resided. "In a landlord-tenant relationship, the lessee is generally considered the occupant and the lessor does not generally have occupancy rights during the term of the lease."

Liberty Hill then appealed to the Michigan Court of Appeals, which upheld the Tax Tribunal's decision. The Michigan Supreme Court granted leave to appeal and also affirmed. The Court concluded, "[T]o occupy property under MCL 211.7o(1), the charitable institution must at a minimum have a regular physical presence on the property...In this situation, the tenants, not petitioner, actually 'occupied' the property."

(Information derived from the Senate Fiscal Agency analysis dated 9-23-08.)

ARGUMENTS:

For:

The Michigan Supreme Court made it clear in *Liberty Hill v Livonia* (see **Background Information**) that charitable organizations do not "occupy" the housing they own and lease to low-income and disabled individuals, for purposes of the tax exemption under Section 7o(1) of the General Property Tax Act.

After this case was decided, Public Acts 454, 455, and 456 of 2008 were enacted to provide limited tax relief to owners of supportive housing property, recognizing the need to make safe, affordable housing available to individuals with disabilities.

Rather than fully exempting supportive housing property from the property tax, the legislation creates an exemption from the mills levied for school operating purposes-providing for the property to be taxed the same as a principal residence. Without this tax relief, nonprofits that provide housing to tenants are burdened with commercial-rate property taxes. This limits the quantity and quality of available housing, which, in turn, impairs the individuals' ability to increase their independence and participate fully in communities across the state.

The current economic climate and prevalence of foreclosures make it more important than ever to ensure an ample supply of affordable housing for people with disabilities.

According to the Community Economic Development Association of Michigan, urgent action by the legislature is needed, since nonprofit organizations must request their certificates from the Michigan State Housing Development Authority by November 1 of each year.

POSITIONS:

CEDAM (The Community Economic Development Association of Michigan) supports the bill. (10-13-09)

Legislative 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.