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BILL



ANALYSIS

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Senate Bill 641 (as reported without amendment)  
Sponsor: Senator Mark C. Jansen  
Committee: Finance

(as enrolled)

Date Completed: 9-23-09

### **RATIONALE**

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.

### **CONTENT**

The bill would amend Public Act 456 of 2008, which adds Chapter 3B to the State Housing Development Authority Act, to delete an enacting section that tie-bars Public Act 456 to House Bills 5437 and 5438 of the 2007-2008 legislative session. (House Bill 5437 was enacted as Public Act 454 of 2008. House Bill 5438 was not enacted.)

Chapter 3B 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 the Michigan State Housing Development Authority 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% of the number of living units certified for a year may be in a single county.

MCL 125.1459-125.1459b

### **BACKGROUND**

#### Public Acts 454-456 of 2008

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 amended the Revised School Code to exempt supportive housing property from the mills levied for school operating purposes, and allow 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 Acts 454 and 455 both define "supportive housing property" as real property certified as supportive housing property under Chapter 3B of the State Housing Development Authority Act.

As described above, Public Act 456 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% 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.

House Bill 5438, which was not enacted, proposed to exempt supportive housing property from the General Property Tax Act and subject it to a new specific tax.

#### 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."

#### **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 Michigan Supreme Court made it clear in *Liberty Hill v Livonia* 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.

By eliminating the tie-bar to a bill that was not enacted, Senate Bill 641 would allow the property tax exemption for supportive housing property to take effect.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

The bill would likely have no impact on State or local revenue or expenditures. The bill would allow definitions and other provisions

regarding certain tax exemptions for supportive housing property to become effective. The tax exemptions allow affected property to be exempt from locally levied mills (usually 18 mills) for school operating purposes. The exemptions are already authorized, but the statutes authorizing the exemptions make reference to the definitions, which are not effective due to the tie-bars in the enacting section of Public Act 456 of 2008.

The distribution of granted exemptions could be altered by the bill, if current exemptions have been granted in a manner inconsistent with the definitions and provisions of Public Act 456 of 2008. That Act also appeared to attempt to impose a limit on the number of exemptions granted each year. The Act created Section 59a, which places limits on how many parcels may be certified as supportive housing property within a specific county. The limit in subsection 3 refers to a 250-unit limit in subsection 1 of that section, although no such limit exists in subsection 1. As a result, it is unclear if enactment of the bill, which would make Section 59a effective, could limit the aggregate number of units authorized as supportive housing property. If fewer exemptions were granted as the result of the bill, it could increase local property tax revenue and reduce the School Aid Fund expenditures required to meet per-pupil funding guarantees.

The bill would have no fiscal impact on MSHDA.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.