

SENATE BILL No. 346

May 1, 2013, Introduced by Senators SMITH, KOWALL and JANSEN and referred to the Committee on Economic Development.

A bill to amend 1966 PA 346, entitled
"State housing development authority act of 1966,"
by amending section 22 (MCL 125.1422), as amended by 2012 PA 327.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 22. The authority possesses all powers necessary or
2 convenient to carry out this act, including the following powers in
3 addition to other powers granted by other provisions of this act:

4 (a) To sue and to be sued; to have a seal and to alter the
5 seal at pleasure; to have perpetual succession; to make and execute
6 contracts and other instruments necessary or convenient to the
7 exercise of the powers of the authority; and to make, amend, and
8 repeal bylaws and rules.

9 (b) To undertake and carry out studies and analyses of housing
10 needs within this state and ways of meeting those needs, including
11 data with respect to population and family groups, the distribution

1 of population and family groups according to income, and the amount
2 and quality of available housing and its distribution according to
3 rentals and sales prices, employment, wages, and other factors
4 affecting housing needs and the meeting of housing needs; to make
5 the results of those studies and analyses available to the public
6 and the housing and supply industries; and to engage in research
7 and disseminate information on housing.

8 (c) To agree and comply with conditions attached to federal
9 financial assistance.

10 (d) To survey and investigate housing conditions and needs,
11 both urban and rural, throughout this state and make
12 recommendations to the governor and the legislature regarding
13 legislation and other measures necessary or advisable to alleviate
14 any existing housing shortage in this state.

15 (e) To establish and collect fees and charges in connection
16 with the sale of the authority's publications and the authority's
17 loans, commitments, and servicing, including, but not limited to,
18 the reimbursement of costs of financing by the authority, service
19 charges, and insurance premiums ~~as-THAT~~ the authority determines to
20 be reasonable and as approved by the authority. Fees and charges
21 shall be determined by the authority and ~~shall not be considered to~~
22 ~~be-ARE NOT~~ interest. The authority may use any accumulated fees and
23 charges and interest income for achieving any of the corporate
24 purposes of the authority, to the extent that the fees, charges,
25 and interest income are not pledged to the repayment of bonds and
26 notes of the authority or the interest on those bonds and notes.

27 (f) To encourage community organizations to assist in

1 initiating housing projects as provided in this act.

2 (g) To encourage the salvage of all possible usable housing
3 scheduled for demolition because of highway, school, urban renewal,
4 or other programs by seeking authority for the sponsors of the
5 programs to use funds provided for the demolition of the buildings,
6 to be allocated to those sponsors approved by the authority to
7 defray moving and rehabilitation costs of the buildings.

8 (h) To engage and encourage research in, and to formulate
9 demonstration projects to develop, new and better techniques and
10 methods for increasing the supply of housing for persons eligible
11 for assistance as provided in this act; and to provide technical
12 assistance in the development of housing projects and in the
13 development of programs to improve the quality of life for all the
14 people of this state.

15 (i) To make or purchase loans, including loans for condominium
16 units as defined in section 4 of the condominium act, 1978 PA 59,
17 MCL 559.104, and including loans to mortgage lenders, which are
18 unsecured or the repayments of which are secured by mortgages,
19 security interests, or other forms of security; to purchase and
20 enter into commitments for the purchase of securities, certificates
21 of deposits, time deposits, or mortgage loans from mortgage
22 lenders; to participate in the making or purchasing of unsecured or
23 secured loans and undertake commitments to make or purchase
24 unsecured or secured loans; to sell mortgages, security interests,
25 notes, and other instruments or obligations evidencing or securing
26 loans, including certificates evidencing interests in 1 or more
27 loans, at public or private sale; in connection with the sale of an

1 instrument or obligation evidencing or securing 1 or more loans, to
2 service, guarantee payment on, or repurchase the instrument or
3 obligation, whether or not it is in default; to modify or alter
4 mortgages and security interests; to foreclose on any mortgage,
5 security interest, or other form of security; to finance housing
6 units; to commence an action to protect or enforce a right
7 conferred upon the authority by law, mortgage, security agreement,
8 contract, or other agreement; to bid for and purchase property that
9 was the subject of the mortgage, security interest, or other form
10 of security, at a foreclosure or at any other sale, and to acquire
11 or take possession of the property. Upon acquiring or taking
12 possession of the property, the authority may complete, administer,
13 and pay the principal and interest of obligations incurred in
14 connection with the property, and may dispose of and otherwise deal
15 with the property in any manner necessary or desirable to protect
16 the interests of the authority in the property. If the authority or
17 an entity that provides mortgage insurance to the authority
18 acquires property upon the default of a borrower, the authority may
19 make a mortgage loan to a subsequent purchaser of that property
20 even if the purchaser does not meet otherwise applicable income
21 limitations and purchase price limits.

22 (j) To set standards for housing projects that receive loans
23 under this act and to provide for inspections to determine
24 compliance with those standards. The standards for construction and
25 rehabilitation of mobile homes, mobile home parks, and mobile home
26 condominium projects shall be established jointly by the authority
27 and the mobile home commission, created in section 3 of the mobile

1 home commission act, 1987 PA 96, MCL 125.2303. However, financing
2 standards shall be established solely by the authority.

3 (k) To accept gifts, grants, loans, appropriations, or other
4 aid from the federal, state, or local government, from a
5 subdivision, agency, or instrumentality of a federal, state, or
6 local government, or from a person, corporation, firm, or other
7 organization.

8 (l) To acquire or contract to acquire from a person, firm,
9 corporation, municipality, or federal or state agency, by grant,
10 purchase, or otherwise, leaseholds or real or personal property, or
11 any interest in a leasehold or real or personal property; to own,
12 hold, clear, improve, and rehabilitate and to sell, assign,
13 exchange, transfer, convey, lease, mortgage, or otherwise dispose
14 of or encumber any interest in a leasehold or real or personal
15 property. This act shall not **BE CONSTRUED TO** impede the operation
16 and effect of local zoning, building, and housing ordinances,
17 ordinances relating to subdivision control, land development, or
18 fire prevention, or other ordinances having to do with housing or
19 the development of housing.

20 (m) To procure insurance against any loss in connection with
21 the property and other assets of the authority.

22 (n) To invest, at the discretion of the authority, funds held
23 in reserve or sinking funds, or money not required for immediate
24 use or disbursement, in obligations of this state or of the United
25 States, in obligations the principal and interest of which are
26 guaranteed by this state or the United States, or in other
27 obligations as may be approved by the state treasurer.

1 (o) To promulgate rules necessary to carry out the purposes of
2 this act and to exercise the powers expressly granted in this act
3 pursuant to the administrative procedures act of 1969, 1969 PA 306,
4 MCL 24.201 to 24.328.

5 (p) To enter into agreements with nonprofit housing
6 corporations, consumer housing cooperatives, limited dividend
7 housing corporations, mobile home park corporations, and mobile
8 home park associations that provide for regulation by the authority
9 of the planning, development, and management of any housing project
10 undertaken by nonprofit housing corporations, consumer housing
11 cooperatives, limited dividend housing corporations, mobile home
12 park corporations, and mobile home park associations and that
13 provide for the disposition of the property and franchises of those
14 corporations, cooperatives, and associations.

15 (q) To appoint to the board of directors of a nonprofit
16 housing corporation, consumer housing cooperative, limited dividend
17 housing corporation, mobile home park corporation, or mobile home
18 park association, a number of new directors sufficient to
19 constitute a majority of the board notwithstanding other provisions
20 of the articles of incorporation or other provisions of law.

21 Directors appointed under this subsection need not be stockholders
22 or members or meet other qualifications that may be described by
23 the certificate of incorporation or bylaws. In the absence of fraud
24 or bad faith, directors appointed under this ~~subsection shall not~~
25 ~~be~~ **SUBDIVISION ARE NOT** personally liable for debts, obligations, or
26 liabilities of the corporation or association. The authority may
27 appoint directors under this ~~subsection~~ **SUBDIVISION** only if 1 or

1 more of the following occur:

2 (i) The nonprofit housing corporation, consumer housing
3 cooperative, limited dividend housing corporation, mobile home park
4 corporation, or mobile home park association has received a loan or
5 advance, as provided for in this act, and the authority determines
6 that the loan or advance is in jeopardy of not being repaid.

7 (ii) The nonprofit housing corporation, consumer housing
8 cooperative, limited dividend housing corporation, mobile home park
9 corporation, or mobile home park association received a loan or
10 advance as provided for in this act and the authority determines
11 that the proposed housing project for which the loan or advance was
12 made is in jeopardy of not being constructed.

13 (iii) The authority determines that some part of the net income
14 or net earnings of the nonprofit housing corporation is inuring to
15 the benefit of a private individual, firm, corporation,
16 partnership, or association; the authority determines that an
17 unreasonable part of the net income or net earnings of the consumer
18 housing cooperative is inuring to the benefit of a private
19 individual, firm, corporation, partnership, or association; or the
20 authority determines that some part of the net income or net
21 earnings of the limited dividend housing corporation, in excess of
22 that permitted by other provisions of this act, is inuring to the
23 benefit of a private individual, firm, corporation, partnership, or
24 association.

25 (iv) The authority determines that the nonprofit corporation or
26 consumer housing cooperative is in some manner controlled by, under
27 the direction of, or acting in the substantial interest of a

1 private individual, firm, corporation, partnership, or association
2 seeking to derive benefit or gain from, or seeking to eliminate or
3 minimize losses in any dealings or transactions with, the nonprofit
4 corporation or consumer housing cooperative. However, this
5 subparagraph ~~shall apply~~ **APPLIES** to individual cooperators in
6 consumer housing cooperatives only in circumstances defined by the
7 authority in its rules.

8 (v) The authority determines that the nonprofit housing
9 corporation, consumer housing cooperative, limited dividend housing
10 corporation, mobile home park corporation, or mobile home park
11 association is in violation of the rules promulgated under this
12 section.

13 (vi) The authority determines that the nonprofit housing
14 corporation, consumer housing cooperative, limited dividend housing
15 corporation, mobile home park corporation, or mobile home park
16 association is in violation of 1 or more agreements entered into
17 with the authority that provide for regulation by the authority of
18 the planning, development, and management of a housing project
19 undertaken by the nonprofit housing corporation, consumer housing
20 cooperative, limited dividend housing corporation, mobile home park
21 corporation, or mobile home park association or that provide for
22 the disposition of the property and franchises of the corporation,
23 cooperative, or association.

24 (r) To give approval or consent to the articles of
25 incorporation submitted to the authority by a corporation seeking
26 approval as a nonprofit housing corporation, consumer housing
27 cooperative, limited dividend housing corporation, or mobile home

1 park corporation under chapter 4, 5, 6, or 8; to give approval or
2 consent to the partnership agreement, joint venture agreement,
3 trust agreement, or other document of basic organization of a
4 limited dividend housing association under chapter 7 or mobile home
5 park association under chapter 9.

6 (s) To engage the services of private consultants on a
7 contract basis for rendering professional and technical assistance
8 and advice.

9 (t) To lease real or personal property, **TO ACT AS THE SOLE**
10 **STATEWIDE PUBLIC HOUSING AGENCY**, and to accept federal funds for,
11 and participate in, federal programs of housing assistance. **FOR**
12 **PURPOSES OF THIS SUBDIVISION, "PUBLIC HOUSING AGENCY" MEANS THAT**
13 **TERM AS DEFINED IN 42 USC 1437A.**

14 (u) To review and approve rental charges for authority-
15 financed housing projects and require whatever changes the
16 authority determines to be necessary. The changes ~~shall~~ become
17 effective after not less than 30 days' written notice is given to
18 the residents of the affected authority-financed housing projects.

19 (v) To set forth in the various loan documents of the
20 authority those restrictions on the sale, conveyance by land
21 contract, or transfer of residential real property, housing
22 projects, or housing units for which a note is held by the
23 authority and restrictions on the assumption by subsequent
24 purchasers of loans originated by and held by, or originated for
25 purchase by and held by, the authority as the authority determines
26 ~~to be necessary in order~~ to comply with requirements of federal
27 statutes, federal rules or regulations promulgated under 5 USC 551

1 to 559, state statutes, or state rules promulgated under the
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
3 24.328, or to obtain and maintain the tax exempt status of
4 authority bonds and notes. However, the authority shall not use a
5 due on sale or acceleration clause solely for the purpose of
6 renegotiating the interest rate on a loan made with respect to an
7 owner-occupied single-family housing unit. Without limiting the
8 authority's power to establish other restrictions, as provided in
9 this section, on the sale, conveyance by land contract, or transfer
10 of residential real property, housing projects, or housing units
11 for which a note is held by the authority and the assumption by
12 subsequent purchasers of loans made or purchased by the authority,
13 the authority shall provide in its loan documents relating to a
14 single family loan that the single family loan may be assumed by a
15 new purchaser only when the new purchaser qualifies under the
16 authority income limitations rules, unless such a restriction
17 diminishes or precludes the insurance or a guarantee by an agency
18 of the federal government with respect to the single family loan. A
19 loan made for a mobile home that the borrower does not intend to
20 permanently affix to real property shall become immediately due and
21 payable if the mobile home is moved out of the state. Any
22 restrictions on conveyance by sale, conveyance by land contract, or
23 transfer that are authorized in this section ~~shall~~ apply only to
24 loans originated by and held by, or originated for purchase by and
25 held by, the authority and may, at the option of the authority, be
26 enforced by accelerating and declaring immediately due and payable
27 all sums evidenced by the note held by the authority. An

1 acceleration and declaration of all sums ~~to be~~ due and payable on
2 conveyance by sale, land contract, or transfer is not an
3 unreasonable restraint on alienation. An acceleration and
4 declaration, unless otherwise prohibited in this subdivision, of
5 all sums ~~to be~~ due and payable under this subdivision is
6 enforceable in any court of competent jurisdiction. This
7 subdivision ~~is applicable~~ **APPLIES** to secured and unsecured loans.
8 This subdivision ~~is also applicable~~ **ALSO APPLIES** to loan documents
9 utilized in conjunction with an authority-operated program of
10 residential rehabilitation by an entity cooperating or
11 participating with the authority under section 22a(4), if the loans
12 are originated with the intent to sell those loans to the
13 authority.

14 (w) To set forth in the various loan documents of the
15 authority remedies for ~~the making of~~ a false statement,
16 representation, or pretense or a material misstatement by a
17 borrower during the loan application process. Without limiting the
18 authority's power to pursue other remedies, the authority shall
19 provide in its loan documents that, if a borrower makes a false
20 statement, representation, or pretense or a material misstatement
21 during the loan application process, the authority, at its option,
22 may accelerate and declare immediately due and payable all sums
23 evidenced by the note held by the authority. An acceleration and
24 declaration of all sums ~~to be~~ due and payable as provided in this
25 subdivision is enforceable in any court of competent jurisdiction.
26 This subdivision is applicable to secured and unsecured loans.

27 (x) To collect interest on a real estate loan, the primary

1 security for which is not a first lien on real estate, at the rate
2 of 15% or less per annum on the unpaid balance. This subdivision
3 does not impair the validity of a transaction or rate of interest
4 that is lawful without regard to this subdivision.

5 (y) To encourage and engage or participate in programs to
6 ~~accomplish the preservation of~~ **PRESERVE** housing in this state
7 available for occupancy by persons and families of low or moderate
8 income.

9 (z) To verify for the state treasurer statements submitted by
10 a city, village, township, or county as to exempt properties under
11 section 7d of the general property tax act, 1893 PA 206, MCL
12 211.7d.

13 (aa) For the purpose of more effectively managing its debt
14 service, to enter into an interest rate exchange or swap, hedge, or
15 similar agreement with respect to its bonds or notes on the terms
16 and payable from the sources and with the security, if any, as
17 determined by a resolution of the authority.

18 (bb) To make working capital loans to contractors or
19 subcontractors on housing projects financed by the authority. The
20 authority shall submit an annual report to the legislature
21 containing the amount, recipient, duration, circumstance, and other
22 related statistics for each capital loan made to a contractor or
23 subcontractor under this subdivision. The authority shall include
24 in the report statistics related to the cost of improvements made
25 to adapt property for use by disabled individuals as provided in
26 section 32b or 44.

27 (cc) Subject to rules of the civil service commission, to

1 adopt a code of ethics with respect to its employees that requires
2 disclosure of financial interests, defines and precludes conflicts
3 of interest, and establishes reasonable post-employment
4 restrictions for a period of up to 1 year after an employee
5 terminates employment with the authority.

6 (dd) To impose covenants running with the land in order to
7 satisfy requirements of applicable federal law with respect to
8 housing assisted or to be assisted through federal programs such as
9 the low income housing tax credit program or the home investment
10 partnerships program. These covenants shall be imposed by executing
11 and recording regulatory agreements between the authority, or a
12 municipality or other entity designated by the authority, and the
13 person or entity to be bound. The covenants shall run with the land
14 and be effective with respect to the parties making the covenants
15 and other intended beneficiaries of the covenants, even though
16 there is no privity of estate or privity of contract between the
17 authority and the persons or entities to be bound.

18 (ee) To impose covenants running with the land in order to
19 satisfy requirements of applicable state or federal law with
20 respect to housing financed by the authority. These covenants shall
21 be imposed by executing and recording regulatory agreements between
22 the authority and the person or entity to be bound. The covenants
23 shall run with the land and be effective with respect to the
24 parties making the covenants and other intended beneficiaries of
25 the covenants, even though there is no privity of estate or privity
26 of contract between the authority and the persons or entities to be
27 bound. With respect to any applicable environmental laws, this

1 subdivision does not grant to the authority any additional rights,
2 privileges, or immunities not otherwise afforded to a private
3 lender that is not in the chain of title for the land.

4 (ff) To participate in programs designed to assist persons and
5 families whose incomes do not exceed 115% of the greater of
6 statewide median gross income or the area median gross income
7 become homeowners ~~where~~ **AND IN WHICH** loans are made by private
8 lenders for purchase by the government national mortgage
9 association, federal national mortgage association, federal home
10 loan mortgage corporation, or other federally chartered
11 organizations. Participation may include providing or funding
12 homeownership counseling and providing some or all of a reserve
13 fund to be used to pay for losses in excess of insurance coverage.

14 (gg) To invest, under the conditions prescribed in this
15 subdivision and without the consent of the escrow depositors, up to
16 20% of funds held, by or for the authority, in escrow accounts for
17 the benefit of the authority or mortgagors of authority-financed
18 housing. The investments under this subdivision shall be made in
19 loans originated or purchased by the authority for construction or
20 rehabilitation of multifamily housing developments for occupancy by
21 persons or families without regard to income. In connection with
22 loans described in this subdivision, the authority may charge and
23 retain fees in amounts similar to those charged with respect to
24 similar loans for which the source of funding does not come from
25 escrow accounts. For purposes of this subdivision, "escrow account"
26 means any account or reserve held by the authority and established
27 in a mortgage or a regulatory agreement to which the authority is a

1 party or which has been assigned to the authority. However, for
2 purposes of this subdivision, escrow account does not include any
3 account labeled in the associated regulatory agreement as
4 "development cost escrow principal" or "operating assurance
5 reserve". For purposes of this subdivision, "multifamily housing
6 development" means a development in which not less than 50% of the
7 floor space is used primarily for residential purposes. The
8 investment authorized by this subdivision shall not be made unless
9 both of the following requirements are met:

10 (i) The return on the loan is approximately equivalent to that
11 which could be obtained from investments of substantially similar
12 credit quality and maturity, as determined by the authority.

13 (ii) The authority agrees to pay with its own funds the
14 principal balance of any loan, made with the escrow ~~funds~~, **ACCOUNT**
15 **MONEY**, that becomes delinquent in excess of 30 days. This
16 subdivision does not obligate the authority to purchase a
17 delinquent loan ~~so long as IF~~, with respect to that loan, the
18 authority pays to the escrow ~~funds~~ **ACCOUNT** from its own funds the
19 amount of the delinquent payments. The authority's election to pay
20 the delinquent payments to the escrow ~~funds~~ **ACCOUNT** does not in any
21 manner abate or cure the delinquency of the loan and the authority
22 may resort to any remedies that would exist in the absence of that
23 payment.

24 (hh) To acquire, develop, rehabilitate, own, operate, and
25 enter into contracts with respect to the management and operation
26 of real and personal property to use as office facilities by the
27 authority and to enter into leases with respect to facilities not

1 immediately necessary for the activities of the authority.

2 (ii) To make loans to certain qualified buyers and resident
3 organizations and to make grants to resident organizations as
4 provided in the following:

5 (i) The urban homestead act, 1999 PA 127, MCL 125.2701 to
6 125.2709.

7 (ii) The urban homesteading on vacant land act, 1999 PA 129,
8 MCL 125.2741 to 125.2748.

9 (iii) The urban homesteading in single-family public housing
10 act, 1999 PA 128, MCL 125.2761 to 125.2770.

11 (iv) The urban homesteading in multifamily public housing act,
12 1999 PA 84, MCL 125.2721 to 125.2734.

13 (jj) To implement and administer a housing and community
14 development program as described in this act.

15 (kk) To implement, administer, or execute administrative,
16 substantive, or supervisory powers pursuant to the individual or
17 family development account program act, 2006 PA 513, MCL 206.901 to
18 206.911.