Legislative Analysis

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ATTAINABLE HOUSING FACILITIES ACT

Senate Bill 362 (proposed substitute H-3)
Sponsor: Sen. Winnie Brinks
House Committee: Local Government and Municipal Finance
Senate Committee: Economic and Small Business Development
Complete to 6-15-22

SUMMARY:

Senate Bill 362 would create a new act, the Attainable Housing Facilities Act, to allow a city, township, or village to establish one or more attainable housing districts. An owner of rental housing property rehabilitated or newly built in a district could receive a tax abatement on the property if certain requirements were met. Notably, the property could consist of no more than four units, and at least 30% of the units would have to be rented to a household with a combined annual income after specified adjustments of 120% or less of the county median income, and the rent could not exceed 30% of the household's income after specified modifications. Qualified property owners would be exempt from standard ad valorem property taxes and instead would pay a specific tax, the attainable housing facilities tax, in an amount as determined under the bill. This abatement would apply to structures and not to land. New exemptions could not be granted after December 31, 2027, but exemptions in effect on that date could continue until they expired.

Establishing an attainable housing district

Under the new act, a city, village, or township could establish one or more attainable housing districts by resolution of its legislative body, either on that body's initiative or upon the filing of a written request with the city, village, or township clerk by the owner or owners of property making up at least 50% of the taxable value of property in the district. Before adopting the resolution, the legislative body would have to provide written notice by certified mail to the county and to all owners of real property in the district. The legislative body also would have to hold a public hearing on the proposed district, giving public notice 10 to 30 days before the hearing. A resolution establishing a district would have to include a finding that there is a need for attainable housing in the district. The legislative body would have to send a copy of the resolution by certified mail to the county.

Attainable housing exemption certificate

After establishment of a district, the owner of a ***qualified facility*** could file with the city, village, or township clerk an application for an attainable housing exemption certificate in the manner and form prescribed by the state tax commission. The application would have to include a general description of the qualified facility and its proposed use, the general nature and extent of the rehabilitation or new construction, a project schedule, and information relating to the provisions described in "Applicant requirements," below.

Qualified facility would mean ***attainable housing property*** located in an attainable housing district to which either of the following applies:

- It is newly constructed on or after the bill's effective date.
- It is existing property that has been renovated with a renovation investment on or after the bill's effective date of at least $5,000 to bring it into conformance

with minimum local building code standards for occupancy. (The renovation investment and local code conformance each would be as determined by the applicable city, village, or township.)

Attainable housing property would mean that portion of real property, of not more than four units, that is not occupied by an owner of the property, that is classified as residential real property under the General Property Tax Act, that is used for residential purposes, and that is rented or leased to an ***income-qualified household*** at no more than 30% of the household's ***modified household income*** as determined by the applicable city, village, or township. Attainable housing property also would include a building or group of contiguous buildings previously used for industrial or commercial purposes that will be converted to a multiple-unit dwelling or a dwelling unit in a multiple-purpose structure, used for residential purposes, consisting of not more than four units, that is rented or leased to an income-qualified household at no more than 30% of the household's modified household income. Attainable housing property would not include either land or public utility property.

Income-qualified household would mean an individual, couple, family, or group of unrelated individuals whose ***adjusted household income*** is 120% or less of the countywide area median income as posted annually on the website of the Michigan State Housing Development Authority.

Modified household income would mean the gross annual income from all sources and before taxes or withholding of all individuals of a household living in a residential dwelling unit or housing unit after deducting all of the following:

- Unusual or temporary income of any member of the household.
- $650 for each member of the household.
- Earnings of a member of the household who is less than 18 years old.
- 50% of the income of a second adult wage earner jointly occupying the residential dwelling unit or housing unit whose individual income is less than that of the wage earner with the highest income.
- $1,000 or 10% of the gross annual income, whichever is less.

Adjusted household income would mean the same thing as ***modified household income***—except that, in determining adjusted household income, the income of a household member who is physically or mentally handicapped would be deducted.[1] (That income would not be deducted to determine ***modified household income***.) Under the bill, adjusted household income would be used to determine eligibility, and modified household income would be used to determine the cap on rent.

Upon receiving an application, the city, village, or township clerk would have to notify the assessor of the local tax collecting unit where the qualified facility is located and the legislative body of each taxing unit that levies ad valorem property taxes in the city, village, or township where the facility is located. The legislative body of the city, village, or township would have to hold a public hearing on an application, giving notice to the applicant, the assessor, and a

[1] See the definition in R 125.101 of the Michigan Administrative Code: https://ars.apps.lara.state.mi.us/AdminCode/DownloadAdminCodeFile?FileName=R%20125.101%20to%20R%20125.224.pdf&ReturnHTML=True

representative of the affected taxing units and to the general public under the Open Meetings Act. (A hearing on an application could not be combined with the hearing on establishing the district.)

The legislative body of the city, village, or township would have 60 *business* days after the clerk receives the application to approve or disapprove it by resolution. If approved, the clerk would have to send a copy of the application and resolution to the state tax commission. If disapproved, the legislative body would have to include its reasons in the resolution, and the clerk would have to send a copy of the resolution by certified mail to the applicant and the assessor. An application that was not timely approved by the legislative body would be considered denied.

The state tax commission would have 120 days after receiving a copy of a resolution to approve or disapprove it. A resolution could not take effect unless approved by the commission.

After approving an application, the commission would have to issue to the applicant a certificate, in a form determined by the commission, containing all of the following:

- The address of the real property on which the qualified facility is located.
- A statement that, unless revoked, the certificate must remain in force for the time period stated in the certificate. If the legislative body of the city, village, or township authorized the certificate for a period of less than 12 years, the certificate would have to contain any factors, criteria, or objectives necessary for extending that period, as determined by the resolution of the city, village, or township.
- A statement of the ***taxable value*** of the qualified facility for the tax year immediately preceding the certificate's effective date, after deducting the taxable value of the land.
- A statement of the time period within which the rehabilitation or construction must be completed, as authorized by the legislative body of the city, village, or township.

  Taxable value would mean the value determined under section 27a of the General Property Tax Act.

The certificate's effective date would be the next December 31 after its date of issuance.

The state tax commission would have to file a copy of the certificate with the city, village, or township clerk and maintain a record of all certificates filed. The state tax commission also would have to send a copy by certified mail to the applicant and to the assessor of the local tax collecting unit where the qualified facility is located.

Applicant requirements

The legislative body of the city, village, or township could not approve an application for a certificate unless all of the following requirements were met:

- The applicant provides a site plan and building floor plan approved by the local planning commission or local zoning administrator, as applicable, that includes the total number of residential dwelling units to be available for rent on the property.
- The applicant provides a statement describing the number of residential dwelling units that will be reserved for income-qualified households at any given time throughout each calendar year in which the tax abatement is in effect.

- The applicant agrees to provide the legislative body with an income certification annually for each income-qualified household in each unit designated as attainable housing property.

A city, village, or township could develop and implement an audit program that includes the audit of the above information. A city, village, or township also could contract with an independent third-party auditor to audit the above information and, if it did so, could require the applicant to cover the cost of the auditor.

The total number of units to be reserved for income-qualified households could be negotiated by the city, village, or township but could not be less than 30% of the total number of residential dwelling units on the property.

If an income-qualified household living in a reserved dwelling unit had a large enough increase in ***adjusted annual income*** between one annual income certification and the next that the household's income no longer qualified, the household could continue to live there for only the rest of the lease agreement. The next available residential unit in the qualified facility would have to be reserved for an income-qualified household. Under no circumstances could all residential dwelling units in a qualified facility be occupied by households whose adjusted household [presumably "annual"] income exceeds 120% of the countywide area median income for more than 12 consecutive months.

Duration of certificate

Unless revoked, a certificate would remain in effect for a period determined by the legislative body of the city, village, or township, which could be from 1 to 12 years. A certificate with a period of less than 7 years could be subject to review by the legislative body and extended. The total amount of time determined for the certificate, including any extensions, could not exceed 15 years after completion of the qualified facility. The certificate would commence with its effective date and end on the next December 30 after the last day of the number of years determined. The date of issuance of a certificate of occupancy, if required, would be the date of completion of a qualified facility.

The review for an extension of a certificate with an initial effective period of less than 7 years would have to be based on factors, criteria, and objectives that are determined and approved by resolution of the legislative body of the city, village, or township at the time the certificate is approved. This resolution would have to be sent, by certified mail, to the applicant, the assessor of the local tax collecting unit where the qualified facility is located, and the state tax commission.

Exemption from ad valorem property taxes

A qualified facility would be exempt from ad valorem property taxes under the General Property Tax Act while its certificate was in effect. This exemption would not apply to the land on which the qualified facility is located.

If the taxable value of the property proposed to be exempt under an application, together with the aggregate taxable value of property exempt under certificates previously granted and currently in force under the act or under 1974 PA 198,[2] exceeded 5% of the taxable value of

[2] The act provides for the establishment of plant rehabilitation districts and industrial development districts. See https://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-198-of-1974.pdf

the city, village, or township, the legislative body of the city, village, or township would have to make a separate finding and include a statement in its resolution approving the application that exceeding that amount could not substantially impede the operation of the city, village, or township or impair the financial soundness of an affected taxing unit.

The assessor of each city, village, or township in which there was a qualified facility with one or more certificates in force would have to determine annually as of December 31 the taxable value of each qualified facility. Upon receiving notice of the filing of an application for a certificate, the assessor would have to determine and provide to the local legislative body the taxable value of the property to which the application pertains.

Attainable housing facilities tax

The attainable housing facilities tax would be levied on every owner of a qualified facility to which a certificate is issued under the act. Except as described below, the amount of the tax in each year would be determined using the following formula:

multiply	1/2 of the average rate of taxation levied on commercial, industrial, and utility property on which ad valorem taxes are assessed as determined for the immediately preceding calendar year by the state board of assessors under section 13 of 1905 PA 282
by	the current taxable value of the qualified facility after deducting the taxable value of the land

Within 60 days after a certificate is granted to a newly constructed facility, the millage rate used to calculate the tax as described above would be increased by three mills for the facility if the state treasurer does not determine that reducing the number of mills levied under the State Education Tax Act and used to calculate the specific tax as described above us necessary to provide an adequate supply of housing for income-qualified households in Michigan.

In addition, the state treasurer could exclude an additional three mills levied under the State Education Tax Act from the millage rate used to calculate the tax as described above if the state treasurer determines that it is necessary to further reduce that rate in order to provide an adequate supply of housing for income-qualified households in Michigan.

Notwithstanding the above calculation, the specific tax paid each year for that part of a qualified facility that is exempt from ad valorem property taxes under the bill and that is not used as attainable housing property in the immediately preceding year would have to be equal to the amount of the ad valorem property taxes that would be paid on that portion of the facility if the facility were not exempt from those taxes under the bill. The owner of the qualified facility would have to allocate the benefits of any tax exemptions granted under the bill exclusively to attainable housing property.

The attainable housing facilities tax would be an annual tax, payable at the same times, in the same installments, and to the same officer or officers as taxes imposed under the General Property Tax Act. Except as described below, the officer or officers would disburse the specific tax payments each year to and among the state, cities, school districts, counties, and authorities, at the same times and in the same proportions as for the disbursement of taxes collected under the General Property Tax Act.

For intermediate school districts receiving state aid under sections 56 and 62 of the State School Aid Act, all or a portion of the amount of the specific tax that would otherwise be disbursed to an intermediate school district, to be determined on the basis of the tax rates used to compute the amount of state aid, would have to be paid to the state treasury to the credit of the state School Aid Fund.

The amount of specific tax described above that would otherwise be disbursed to a local school district for school operating purposes would be paid instead to the state treasury and credited to the School Aid Fund.

The officer or officers would have to send a copy of the amount of disbursement made to each unit to the Department of Treasury on a form provided by the department.

A qualified facility located in a renaissance zone under the Michigan Renaissance Zone Act would be exempt from the specific tax to the extent and for the duration provided under that act, except for that portion of the specific tax attributable to a special assessment or a tax described in section 7ff(2) of the General Property Tax Act. The specific tax would have to be disbursed proportionately to the taxing unit or units that levied the special assessment or the tax described in section 7ff(2) of the General Property Tax Act.

Until paid, the amount of the specific tax would be a lien on the real property to which the certificate applies. Proceedings on the lien could commence only upon the filing by the appropriate collecting officer of a certificate of nonpayment of the specific tax, along with an affidavit of proof of service of the certificate of nonpayment upon the owner of the qualified facility by certified mail, with the register of deeds of the county where the qualified facility is located.

Certificate transfers, revocations, and reinstatements

A certificate holder could transfer and assign the certificate to a new owner of the qualified facility if the city, village, or township approved the transfer after application by the new owner.

The legislative body of the city, village, or township could, by resolution, revoke a certificate upon finding that the qualified facility was not completed in the authorized time frame or that the certificate holder has not been operating the facility in good faith in a manner consistent with the purposes of the act (in the absence of circumstances beyond the certificate holder's control). In addition, if a certificate holder requested revocation of the certificate by certified mail sent to the legislative body of the city, village, or township, that body could, by resolution, revoke the certificate.

The state tax commission could reinstate a revoked certificate upon the certificate holder's written request to the state tax commission and the legislative body of the city, village, or township. The state tax commission also could reinstate a revoked certificate for transfer to a subsequent owner if the subsequent owner applies to the legislative body for the transfer and the legislative body submits to the state tax commission a resolution of concurrence. In either case, the certificate could be reinstated only if the facility continued to qualify under the act.

Reporting requirements

By June 15 each year, each city, village, or township granting a certificate would have to report to the state tax commission on the status of each exemption, including the current taxable value of the applicable property.

Based on the information filed with the state tax commission, the Department of Treasury would have to annually prepare a report on attainable housing districts and submit it to the House and Senate committees responsible for tax policy and economic development issues.

Three years after the effective date of the act, the department would have to prepare and submit to the same committees an economic analysis of the costs and benefits of the act in the three local governmental units where it was most heavily used.

Sunset on new exemptions

A new exemption could not be granted after December 31, 2027, but an exemption then in effect would continue until the certificate expired.

FISCAL IMPACT:

The bill could reduce state and local property tax revenue by an indeterminate amount for those local units of government that authorize an attainable housing district under the bill. Any fiscal impact would depend on whether the attainable housing would have occurred without the property tax incentive. The bill would reduce revenues relative to current law if it was determined that the attainable housing would have occurred even if no property tax incentive existed. The magnitude of the reduction in tax revenues would be directly related to the quantity and value of newly eligible properties. Where school operating mills are reduced on eligible properties, costs for the School Aid Fund would increase assuming the foundation allowance were maintained. State property taxes would be reduced via the state education tax (SET). In the alternative, if the attainable housing would not have been undertaken but for the incentive then it could be argued that the incentive would increase state and local property tax revenues by an unknown amount.

Instead of the normal ad valorem property taxes, newly eligible properties would be subject to a new attainable housing facilities tax (specific tax) described in the analysis above. Generally speaking, the specific tax would be equal to 1/2 of the average tax rate on commercial, industrial, and utility property multiplied by the current taxable value of the qualified facility after deducting the taxable value of the land. Additional details related to the specific tax are described in the legislative analysis above.

The bill likely would increase certain administrative costs for local units of government that elected to authorize attainable housing districts. These administrative costs could include assessment activities, notification costs, and other oversight and regulatory costs.

The bill would increase costs for the Department of Treasury by an unknown amount. Costs would include those for administration, oversight and regulation, and reporting and costs associated with the required economic analysis after three years.

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