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BILL ANALYSIS

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Senate Bill 362 (as introduced 4-15-21)
Sponsor: Senator Winnie Brinks
Committee: Economic and Small Business Development

Date Completed: 4-29-21

CONTENT

The bill would create the "Attainable Housing and Rehabilitation Act" to do the following:

- **Allow a qualified local governmental unit, by resolution of its legislative body, to establish one or more attainable housing districts within its jurisdiction.**
- **Before adopting a resolution to establish a district, require a qualified local governmental unit to provide certain notice and afford an opportunity for a public hearing.**
- **Upon establishment of a district, allow the owner of a qualified facility to file an application for an attainable housing exemption certificate with the clerk of the qualified local governmental unit that established the district.**
- **Require an application to include a site plan and building floor plan approved by the local planning commission or local zoning administrator and a statement describing the number of residential units that would be reserved for income-qualified residents, among other things.**
- **Specify that the total number of units to be reserved for income-qualified households would have to be negotiated by the qualified local governmental unit but could not be less than 30% of the total number of residential units on the property or one residential unit, whichever was greater.**
- **Require a clerk to forward a copy of the application and resolution to the State Tax Commission and require the Commission to approve or disapprove the resolution.**
- **If approved, require the Commission to issue the applicant a certificate that included certain information concerning the qualified facility's taxable value and the period approved for the project to be completed, among other things.**
- **Require a certificate to be issued for a period of at least one year, but not to exceed 12 years, with an opportunity for extension to not more than 15 years.**
- **Require the amount of the tax, in each year, to be determined by multiplying half of the total mills levied as ad valorem taxes for that year by all taxing units within which the qualified facility was located by the current taxable value of the real and personal property of the qualified facility after deducting the taxable value of the land and of personal property other than certain personal property assessed pursuant to the General Property Tax Act.**
- **Provide certain exemptions to the tax levied under the proposed Act.**
- **Provide for the revocation, reinstatement, and transfer of a certificate.**
- **By October 15 each year, require each qualified local governmental unit granting a certificate to report to the Commission on the status of each exemption.**

Definitions

Under the proposed Act, "attainable housing district" or "district" would mean an area in a qualified local governmental unit established as provided in the Act in which attainable housing property is or will be located. "Qualified local governmental unit" would mean a city, village, or township.

"Attainable housing property" would mean that portion of real property not occupied by an owner of that real property that is classified as residential real property under Section 34c of the General Property Tax Act, used for residential purposes, that is rented or leased to an income-qualified household at no more than 30% of that household's combined gross annual income as determined by the qualified local governmental unit. The term also would include a building or group of contiguous buildings previously used for industrial or commercial purposes that would be converted to a multiple-unit dwelling or dwelling unit in a multiple-purpose structure, used for residential purposes, that was rented or leased to an income-qualified household at no more than 30% of the household's combined gross annual income as determined by the qualified local governmental unit. The term would not include land or property of a public utility.

"Income-qualified household" would mean an individual, couple, or group of adults earning a combined annual income of 120% or less of the county-wide area median income as determined by the qualified local governmental unit within income limits as determined by the Michigan State Housing Development Authority (MSHDA).

"Qualified facility" would mean a new facility or a rehabilitated facility. "New facility" would mean attainable housing property newly constructed on or after January 1, 2017. "Rehabilitated facility" would mean existing attainable housing property that has been renovated on or after January 1, 2017, to bring the property into conformance with minimum local building code standards for occupancy, as determined by the qualified local governmental unit.

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

(Section 34c of the General Property Tax Act classifies residential real property as follows: a) platted or unplatted parcels, with or without buildings, and condominium apartments located within or outside a village or city, which are used for, or probably will be used for, residential purposes; b) parcels that are used for, or probably will be used for, recreational purposes, such as lake lots and hunting lands, located in an area used predominantly for recreational purposes; and c) for taxes levied after December 31, 2002, a home, cottage, or cabin on leased land, and a mobile home that would be assessable as real property under the General Property Tax Act.

Section 27a of the General property Tax Act specifies that the taxable value of each parcel of property is the lesser of the property's taxable value in the immediately preceding year minus any losses, multiplied by a certain rate, plus all additions, or the property's current State equalized value, among other methods of determination.)

Establishment of an Attainable Housing District

Under the proposed Act, a qualified local governmental unit, by resolution of its legislative body, could establish one or more attainable housing districts within the qualified local governmental unit. The legislative body of a qualified local governmental unit could establish an attainable housing district on its own initiative or upon a written request filed by the owner

or owners of property comprising at least 50% of all taxable value of the property located within a proposed district. The written request would have to be filed with the clerk of the qualified local governmental body.

Before adopting a resolution, the legislative body would have to give written notice by certified mail to the county in which the proposed district was to be located and the owners of all real property within the proposed district. The legislative body would have to afford an opportunity for a hearing on the establishment of the district at which any of those owners and any other resident or taxpayer of the qualified local governmental unit could appear and be heard. The legislative body would have to give public notice 30 days before the date of the hearing.

The Act would require the legislative body of the qualified local governmental unit to set forth in its resolution a finding and determination that there was a need for attainable housing within the district and require the body to provide a copy of the resolution by certified mail to the county in which the district was located. Within 28 days after receiving a copy of the resolution establishing a district, the county could reject the establishment of the district by written notification to the qualified local governmental unit if the county had an elected county executive or by a resolution of the county board of commissioners provided to the qualified local governmental unit if the county did not have an elected county executive.

Attainable Housing Exemption Certificate Application

Under the Act, if the district were established, the owner of a qualified facility could apply for an attainable housing exemption certificate with the clerk of the qualified local governmental unit that established the district. The application would have to be filed in the manner and form prescribed by the State Tax Commission. The application would have to contain or be accompanied by a general description of the qualified facility, a general description of the proposed use of the qualified facility, the general nature and extent of the new construction or rehabilitation to be undertaken, a time schedule for undertaking and completing the qualified facility, and information relating to requirements described below.

After receiving an application for a certificate, the clerk of the qualified local governmental unit would have to notify in writing the assessor of the local tax collecting unit in which the qualified facility was located, and the legislative body of each taxing unit that levied ad valorem property taxes in the qualified local governmental unit in which the qualified facility was located. Before acting on the application, the legislative body of the qualified local governmental unit would have to hold a public hearing on the application and give public notice to the applicant, the assessor, a representative of the affected taxing units, and the general public. The hearing on each application would have to be held separately from the hearing on the establishment of the district.

Approval or Disapproval of Application

The Act would require the legislative body of the qualified local governmental unit, not more than 60 days after receiving the application, to approve or disapprove by resolution the application for a certificate in accordance with requirements described below and other provisions of the Act. The clerk would have to retain the original application and resolution.

The legislative body of the qualified local governmental unit could not approve an application for a certificate unless the applicant complied with all the following requirements:

-- The applicant provided a site plan and building floor plan approved by the local planning commission or local zoning administrator, whichever was applicable under the local zoning

ordinance, that included the total number of residential units to be available for lease or rent on the property.
-- The applicant provided a statement describing the number of residential units that would be reserved for income-qualified residents at any given time throughout each calendar year in which the rehabilitation tax was in effect.
-- The applicant agreed to conduct an income certification for each resident residing within each residential unit designated as attainable housing property for each year in which the resident remained a resident of that property.

The proposed Act specifies that the total number of units to be reserved for income-qualified households would have to be negotiated by the qualified local governmental unit but could not be less than 30% of the total number of residential units on the property or one residential unit, whichever was greater.

If an application were approved, the clerk would have to forward a copy of the application and resolution to the Commission. If disapproved, the reasons would have to be set forth in writing in the resolution and the clerk would have to send by certified mail a copy of the resolution to the applicant and to the assessor. A resolution would not be effective unless approved by the Commission as described below.

Under the Act, not more than 60 days after receipt of a copy of the application and resolution adopted as described above, the Commission would have to approve or disapprove the resolution. Following approval of the application by the legislative body of the qualified local governmental unit and the Commission, the Commission would have to issue to the applicant a certificate in the form the Commission determined, which would have to contain all the following:

-- A legal description of the real property on which the qualified facility was located.
-- A statement that, unless revoked as provided in the Act, the certificate would remain in force for the period stated in the certificate.
-- A statement of the taxable value of the qualified facility, separately stated for real and personal property, for the tax year immediately preceding the effective date of the certificate after deducting the taxable value of the land and personal property other than personal property assessed pursuant to Section 8(d) and Section 14(6) of the General Property Tax Act.
-- A statement of the period of time authorized by the legislative body of the qualified local governmental unit within which the rehabilitation or construction would have to be completed.
-- If the period of time authorized by the legislative body of the qualified local governmental unit were less than 12 years, the certificate would have to contain the factors, criteria, and objectives, as determined by the resolution, necessary for extending the period of time, if any.

(Section 8(d) of the General Property Tax Act specifies that, for taxes levied after December 31, 2001, personal property includes buildings and improvements located upon leased real property. Section 14(6) specifies that, for taxes levied after December 31, 2001, buildings and improvements otherwise exempt under the Act that are located upon the real property of the United States or of the State, or upon the real property of any person, firm, association, or corporation if the owner of the building is not the owner of the fee title to that real property must be assessed as personal property to the owner or occupant of the building in the local tax collecting unit in which the real property is located.)

The Act specifies that the effective date of the certificate would be the December 31 immediately following the date of issuance of the certificate. The Commission would have to

file with the clerk of the qualified local governmental unit a copy of the certificate and the Commission would have to maintain a record of all certificates filed. The Commission also would have to send, by certified mail, a copy of the certificate to the applicant and the assessor of the local tax collecting unit in which the qualified facility was located.

Certificate's Effective Period

Under the Act, unless earlier revoked as provided below, a certificate would have to remain in force and effect for a period to be determined by the legislative body of the qualified local governmental unit. The certificate would have to be issued for a period of at least one year, but not to exceed 12 years. If the number of years determined were less than seven, the certificate could be subject to review by the legislative body of the qualified local governmental unit and the certificate could be extended. The total amount of time determined for the certificate including any extensions could not exceed 15 years after the completion of the qualified facility. The certificate would have to commence with its effective date and end on the December 31 immediately following the last day of the number of years determined. The date of issuance of a certificate of occupancy, if required by appropriate authority, would have to be the date of completion of the qualified facility.

If the number of years determined by the legislative body of the qualified local governmental unit for the period a certificate remained in force was less than seven years, the review of the certificate to determine an extension would have to be based upon factors, criteria, and objectives that would have to be placed in writing, determined and approved when the certificate was approved by the local governmental unit and sent to the applicant, the assessor of the local tax collecting unit in which the qualified facility was located, and the Commission.

Tax Determination, Levy, & Disbursement

Under the Act, the assessor of each qualified local governmental unit in which there was a qualified facility with respect to which one or more certificates had been issued and were in force would have to determine annually as of December 31 the value and taxable value, for real and personal property, of each qualified facility separately, having the benefit of a certificate and after receiving notice of the filing of an application or the issuance of a certificate, would have to determine and furnish to the local legislative body the value and the taxable value of the property to which the application pertained.

The attainable housing rehabilitation tax would be levied upon every owner of a qualified facility to which a certificate was issued. The amount of the rehabilitation tax, in each year, would have to be determined by multiplying half of the total mills levied as ad valorem taxes for that year by all taxing units within which the qualified facility was located by the current taxable value of the real and personal property of the qualified facility after deducting the taxable value of the land and of personal property other than personal property assessed pursuant to Sections 8(D) and 14(6) of the General Property Tax Act.

The rehabilitation 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 were payable. Except as otherwise provided, the officer or officers would have to disburse the rehabilitation tax payments received by the officer or officers each year to and among the State, cities, school districts, counties, and authorities, at the same times and in the same proportions as required by law for the disbursement of taxes collected under the General Property Tax Act.

For intermediate school districts (ISDs) receiving State aid under Sections 56, 62, and 81 of the State School Aid Act, of the amount of the specific tax that otherwise would be disbursed

to an ISD, all or a portion, to be determined on the basis of the tax rates being 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 (SAF). The amount of specific tax levied as described above that otherwise would be disbursed to a local school district for school operating purposes would have to be paid instead to the State Treasury and credited to the SAF. The officer or officers would have to send a copy of the amount of disbursement made to each unit as described above to the Commission on a form provided by the Commission.

(Section 56 of the State School Aid Act governs State aid received by ISDs for the purpose of special education. Section 62 governs State aid received by ISDs for vocational-technical education. Section 81 governs State aid received by ISDs for professional development.)

Exemptions

The Act specifies that a qualified facility located in a renaissance zone under the Michigan Renaissance Zone Act would be exempt from the rehabilitation tax levied under the Act to the extent and for the duration provided under to the Michigan Renaissance Zone Act, except for that portion of the rehabilitation tax attributable to a special assessment or a tax described in Section 7ff(2) of the General Property Tax Act. The rehabilitation tax calculated as described above 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.

(Section 7ff(2) of the Michigan Renaissance Zone Act specifies that, except as otherwise provided, real and personal property in a renaissance zone is not exempt from collection of the following: a) a special assessment levied by the local tax collecting unit in which the property is located; b) ad valorem property taxes specifically levied for the payment of principal and interest of obligations approved by the electors; and c) a tax levied under the Revised School Code.)

A qualified facility for which a certificate was in effect, but not the land on which the qualified facility was located, or personal property other than personal property assessed pursuant to Sections 8(d) and 14(6) of the General Property Tax Act, for the period on and after the effective date of the certificate and continuing so long as the certificate is in force, would be exempt from ad valorem property taxes collected under the General Property Tax Act.

A new exemption could not be granted under the Act after December 31, 2031, but an exemption then in effect would have to continue until the certificate expired.

Lien on Certificate

The Act specifies that the amount of tax applicable to real property, until paid, would be a lien upon the real property to which the certificate was applicable. Proceedings upon the lien as provided by law for the foreclosure in the circuit court of mortgage liens upon real property could commence only upon the filing by the appropriate collecting officer of a certificate of nonpayment of the rehabilitation tax applicable to real property, together 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 in which the quality facility was situated.

Revocation, Reinstatement, & Transfer of Certificate

Under the Act, the legislative body of the qualified local governmental unit, by resolution, could revoke the certificate of a qualified facility if it found that the completion of the qualified facility had not occurred within the time authorized by the legislative body in the certificate or a duly authorized extension of that time, or that the holder of the certificate had not

proceeded in good faith with the operation of the qualified facility in a manner consistent with the purpose of the proposed Act and in the absence of circumstances that were beyond the control of the holder of the certificate.

After receiving a request by certified mail to the legislative body of the qualified local governmental unit by the holder of a certificate requesting revocation of the certificate, the legislative body of the qualified local governmental unit could revoke the certificate by resolution.

Upon written request of the holder of a revoked certificate to the legislative body to the qualified local governmental unit and the Commission or upon the application of a subsequent owner to the legislative body of the qualified local governmental unit to transfer the revoked certificate to a subsequent owner, and the submission to the Commission of a resolution of concurrence by the legislative body of the qualified local governmental unit in which the qualified facility was located, and if the qualified facility continued to qualify under the Act, the Commission could reinstate a revoked certificate for the holder or a subsequent owner that had applied for the transfer.

The Act would allow a certificate to be transferred and assigned by the holder of the certificate to a new owner of the qualified facility if the qualified local governmental unit approved the transfer and application by the new owner.

Reporting Requirements

Under the Act, by October 15 each year, each qualified local governmental unit granting a certificate would have to report to the Commission on the status of each exemption. The report would have to include the current value of the property to which the exemption pertained, the value on which the rehabilitation tax was based.

The Department of Treasury would have to prepare and submit annually to the committees of the House of Representatives and the Senate responsible for tax policy and economic development issues a report on the utilization of districts, based on the information filed with the Commission. Three years after the effective date, the Department would have to prepare and submit to those same committees an economic analysis of the costs and benefits of the Act in the three qualified local governmental units in which it had been most heavily utilized.

General Provisions

The Act specifies that if the taxable value of the property proposed to be exempt pursuant to an application under consideration, considered together with the aggregate taxable value of property exempt under certificates previously granted and currently in force under the proposed Act or Public Act 198 of 1974 exceeded 5.0% of the taxable value of the qualified local governmental unit, the legislative body of the qualified local governmental unit would have to make a separate finding and would have to include a statement in its resolution approving the application that exceeding that amount would not have the effect of impeding substantially the operation of the qualified local governmental unit or impairing the financial soundness of an affected taxing unit. (Public Act 198 of 1974 governs plant rehabilitation districts and industrial development districts in local governmental units.)

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have a negative fiscal impact on the State and local governments. Exempting

qualified facilities from property taxes would reduce revenue to local governments, and would reduce revenue and increase costs to the SAF. The exemption would reduce revenue for the State Education Tax, and since school operating mills also would be reduced, costs to the SAF would increase if the foundation allowance were maintained. Since any exemption would need to be approved by the local government, any fiscal impact would depend on decisions made by those units of government, as well as the specific characteristics of the exempted facilities.

The attainable housing rehabilitation tax would be levied at one half the millage rate from which the qualified facility was exempted. The revenue from the tax would be distributed in the same manner as the exempted taxes, except for the described portion of millages for ISDs and school operating expenses, which would be distributed to the SAF. This distribution would reimburse local governments and the SAF partially for lost revenue from the exemptions.

The Department of Treasury would experience additional administrative costs to report annually on the utilization of districts and to produce an economic analysis. These responsibilities could require additional staff and resources and, accordingly, additional appropriations. The State Tax Commission would experience additional administrative costs to process applications within 60 days, which could require staff and resources greater than those currently appropriated.

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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.