Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 417 (as passed by the Senate) *(enrolled version)*
Sponsor: Senator Sam Singh
Committee: Housing and Human Services

Date Completed: 5-9-24

RATIONALE

The Michigan State Housing Development Authority (MSHDA) uses pass-through financing in which the bonds issued to finance a development are secured by the revenues of the borrowers, the real and personal property being financed, and a form of credit enhancement. This process ensures that the bonds are not an obligation of the State. According to testimony before the Senate Committee on Housing and Human Services, the State is facing a housing crisis and an aging population. It has been suggested that developers with larger project budgets, projects with permanent placement structures, and projects with housing for those 55 and older should be able to use MSHDA's pass through financing programs.

CONTENT

The bill would amend the State Housing Development Authority Act to do the following:

- **Specify that MSHDA could use the proceeds of certain notes or bonds to loan money through a mortgage lender for projects with independent living, congregate care, assisted living units for individuals 55 years of age or older, or supporting facilities to serve and improve areas in which the financed multifamily project was located.**
- **Modify, from 30% to 15%, the minimum percentage of total costs that must be spent on rehabilitation for a project to qualify as rehabilitation.**
- **Allow, instead of requiring, MSHDA to establish higher income limits for specified housing projects, generally multifamily housing projects.**
- **Allow a borrower to qualify for a loan with a private placement structure.**
- **Modify the application requirements for a borrower seeking to qualify for a loan and reduce the application fee for a loan by a specified amount.**
- **Specify that MSHDA could issue a six-month loan commitment.**
- **Specify that, if MSHDA determined that the repayment of the note or bonds would be reasonably secure because of the proposed credit enhancement or private placement structure, that determination would be conclusive and would have to take the place of MSHDA's normal underwriting and feasibility review.**
- **Modify certain fees a borrower would have to pay to MSHDA.**
- **Increase, from $25.0 million to $100.0 million, the maximum allowed outstanding loan commitment for specified borrowers.**
- **Allow MSHDA to establish a fee to be paid by a borrower during an applicable compliance monitoring period.**

Loan Uses

Generally, the Act requires MSHDA to use the proceeds of notes or bonds to make loans directly, or indirectly by a loan through a mortgage lender, to a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, limited dividend housing

association, mobile home park corporation, mobile home park association, or public body or agency, for the construction, rehabilitation, or long-term financing of the following:

-- Multifamily housing projects for students or low- or moderate-income persons.
-- Multifamily housing projects in which at least 20% of the dwelling units are allotted to individuals of low- or moderate-income and in which no more than 80% of the units are available without regard to income.
-- Social, recreational, commercial, or communal facilities to serve and improve the residential area in which an authority-financed multifamily project is located or planned to be located, enhancing the viability of such housing.

Under the bill, MSHDA would have to use the proceeds of notes or bonds to make loans directly, or indirectly by a loan through a mortgage lender, to a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, limited dividend housing association, mobile home park corporation, mobile home park association, or public body or agency, for the construction, rehabilitation, long-term financing, *or financing* of the following:

-- Multifamily housing projects for students or low- or moderate-income persons.
-- *Projects with independent living, congregate care, or assisted living units for individuals 55 year of age or older.*
-- Multifamily housing projects in which no less than 20% of the dwelling units are allotted to individuals of low- or moderate-income and in which no more than 80% of the units are available without regard to income.
-- Social, recreational, commercial, *supporting*, or communal facilities to serve and improve the residential area in which an authority-financed multifamily project is located or planned to be located, enhancing the viability of such housing.

Rehabilitation Qualification

Under the Act, to qualify as rehabilitation, the rehabilitation expenditures with respect to the project must equal or exceed 30% of the portion of the cost of acquiring the building and equipment financed with the proceeds of the notes or bonds issued to acquire and rehabilitate the project. For projects in distressed areas, the percentage may be reduced if MSHDA determines that it would benefit the community or potential residents. Additionally, MSHDA will not provide long-term financing unless the project is built or rehabilitated in anticipation of such financing, the project is undertaken with MSHDA financing, the financing involves a housing project with occupancy restrictions assuring occupancy of some or all of the units by low- or moderate- income families or individuals that end within two years, or it is a housing project owned and operated by a qualified nonprofit housing corporation.

The bill would delete these provisions and instead, to qualify as rehabilitation, the rehabilitation expenditures with respect to the project would have to equal or exceed 15% of the proceeds of the related notes or bonds.

The Act requires MSHDA to establish higher income limits for a housing project financed under the provisions described above. The bill would make this provision permissible, instead of a requirement.

Private Placement Structure

Generally, a borrower seeking to qualify for a loan must file an application with MSHDA that includes the following:

-- A description of the proposed credit enhancement.

- -- An undertaking to pay all costs of issuing the notes or bonds to provide compensation for any underwriters, trustees, counsel, and other professionals as necessary to complete the financing.
- -- An application fee equal to $4,000 or 0.005 multiplied by the principal amount of notes or bonds for which issuance is requested, whichever is greater.

The proposed credit enhancement can be in the form of a letter of credit, bonding, guarantee, mortgage, insurance, or other appropriate security in a sufficient amount to assure MSHDA that the repayment is secure.

The bill would modify these requirements to specify that a borrower would have to include in an application a description of the proposed enhancement credit or private placement structure. The proposed credit enhancement could be in the form of a letter of credit, bonding, guarantee, mortgage insurance, *standby agreement*, or other appropriate security for the repayment of the notes or bonds. Additionally, the proposed private placement structure would have to provide for the sale and resale of the notes or bonds consistent with the restrictions and limitations established by MSHDA. If MSHDA determined that the repayment of the note or bonds would be reasonably secure because of the proposed credit enhancement or private placement structure, that determination would be conclusive and would have to take the place of MSHDA's normal underwriting and feasibility review.

(Private placements are a financing tool used to secure funding for development, among other things. Bonds are privately offered to investors and institutions. Generally, the issuer of a private placements can include credit enhancements as a part of the placement's structure in the form of as guarantees, collateralization, insurance, or other protections for an investor.)

The bill would reduce the application fee to 0.001 multiplied by the principal amount of notes or bonds for which issuance was requested.

Loan Commitment Funds & Eligibility

Currently, MSHDA has a $5.0 billion limit on outstanding bonds and notes. Under the Act so long as there is uncommitted bonding capability, MSHDA must issue a six-month commitment to loan funds for a multifamily housing project. The commitment is contingent upon MSHDA's ability to sell its notes and bonds. The loan can be either the total development cost of the project or $25.0 million, whichever is less. If the proposed multifamily project is in an eligible distressed area the loan can be either the total amount of the development cost or $50.0 million. The commitment determination is based on the following:

- -- The housing project is eligible for the applicable financing.
- -- The borrower is an eligible borrower.
- -- The application requirements described above.
- -- If the loan is made indirectly by a loan through a mortgage lender the requirements of Section 44b have been met.

Additionally, the determination is contingent on if borrower has provided evidence of commitment to issue a credit enhancement in the form of a letter of credit, bonding, guarantee, mortgage insurance, or other appropriate security. If MSHDA determines that repayment of the notes and bonds will be reasonably secure, MSHDA's review of the credit enhancement will take place of MSHDA's normal underwriting and feasibility review.

(Section 44b prescribes the requirements for MSHDA to make and contract to make loans to mortgage lenders for certain purposes related to housing projects.)

Instead, under the bill, so long as there was uncommitted bonding capability, MSHDA *could* issue a six-month commitment to loan funds for a multifamily housing project. This ability would be contingent on MSHDA's ability to sell its notes. The commitment determination would be based on the following:

-- The housing project was eligible for the applicable financing.
-- The borrower was an eligible borrower.
-- The application requirements described above were met.
-- The borrower had provided acceptable evidence of commitment to issue the proposed credit enhancement or privately purchase the notes or bonds as referenced in the borrower's application and approved by MSHDA.
-- If the loan were made indirectly by a loan through a mortgage lender the requirements of Section 44b had been met.

Additionally, upon receiving a loan commitment from MSHDA, the borrower must pay a commitment fee which cannot exceed 0.1% of the principal amount of the notes and bonds to be issued. The amount previously paid by the borrower as an application fee is credited toward the commitment fee. The Law specifies that MSHDA must extend the six-month loan commitment described above for an additional six-months for a nonrefundable extension fee of $5,000. Under the bill, MSHDA *could* extend the loan commitment for such a fee.

Unless the borrower is a qualified nonprofit corporation or a limited dividend housing association entirely owned and controlled by one or more nonprofit corporation and can borrow from MSHDA without a State volume limitation, a borrower and any individual related to the borrower must not have an outstanding loan commitment under the Act of no more than $25.0 million or the total development amount on a proposed multifamily project described above. Instead, the bill specifies that a borrower described above could not have an outstanding loan commitment of more than $100.0 million or the total development cost approved above.

Fees

Under the Act, the borrower must pay a fee upon issuance of notes or bonds to finance a housing project as follows:

-- For a loan made for a project in an eligible distressed area, no more than 0.9% of the principal amount of the notes and bonds.
-- For a loan made on a project in a non-distressed area, no more than 1.9% of the principal amount of the notes and bonds.

If a borrower has been issued a note or bond for a project in an eligible distressed area within 180 days before financing a subsequent project in a non-distressed area the fee for the subsequent project is capped at 0.9%. If a borrower has already paid the 1.9% fee for a project in a non-distressed area, MSHDA may not change an additional fee for the distressed area project if the notes and bonds are issued within 180 days after those of the non-distressed area project. The bill would delete these requirements, and instead, a borrower would have to pay MSHDA a fee of no more than 1.9% of the principal amount of the notes and bonds for a loan made for a project.

In addition to the fees described above, MSHDA can establish an annual fee or other administrative fees for the borrower to pay during the term of the loan. The bill would specify that MSHDA also could establish a fee to be paid by the borrower during an applicable compliance monitoring period.

If the owner of a multifamily housing project financed the project through a MSHDA loan described above and the owner provides MSHDA with satisfactory evidence that a prospective new owner is an eligible borrower and the refinancing of the project will not be impaired as a result of sale, refinancing, or re-syndication, the borrower may sell, refinance from a source other than MSHDA, or re-syndicate the project at any time. A prepayment penalty or fee is not required for the sale, refinancing, or re-syndication other than a prepayment penalty or fee owing to the holders of notes and bonds issued to finance the project and the owner must pay all fees before or concurrent with the sale, refinancing, or re-syndication. The bill would specify that the prepayment penalty or fee also could be paid to the applicable mortgage lender or credit enhancer.

MCL 125.1444c

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

Michigan is experiencing and housing crisis affecting the State's aging population, among others. The bill is needed to increase the number of housing projects approved under MSHDA's bonding authority. According to testimony before the Senate Committee on Housing and Human Services, the State is 190,000 housing units short of demand. Pass-through bond financing plays a critical role in increasing affordable housing stock in the State. Allowing developers to use the program to create assisted living units, units for individuals aged 55 and older, and supporting facilities to serve and improve areas in which the financed multifamily project was located would help reduce the shortage for Michigan's shifting population.

Supporting Argument

Lowering the minimum percentage of total costs that must be spent on rehabilitation to qualify for pass-through financing to 15% aligns with Federal regulations. Generally, Section 147(d) of the Internal Revenue Code (IRC) prohibits the acquisition of used property with bond proceeds unless 15% of the acquisition cost of the building and related equipment is spent on rehabilitation.[1] Aligning with Federal regulations would decrease the cost to entry and allow more developers to engage with the program.

Supporting Argument

Allowing developers to secure private placements would streamline the development process between investors and developers to increase production of housing units. Requiring credit enhancement ensures that bonds are paid. Institutional investors can independently assess risk for bond purchases. Projects created in non-distressed areas are more expensive and are needed. According to testimony before the Senate Committee on Housing and Human Services, many states already allow developers to secure private placements in a streamlined process. Developers can work directly with the bond purchaser and reduce the number or financing sources and parties involved in the transaction. These factors lower the total development budget and allow those retained funds to be used for the developments. By securing a private placement, developers can finance projects that cost more.

[1] "Rehabilitation Requirement under IRC Section 147(d) for Financing Acquisitions of Existing Property." https://www.irs.gov/tax-exempt-bonds/rehabilitation-requirement-under-irc-section-147d-for-financing-acquisitions-of-existing-property. Retrieved on 4-24-24.

Opposing Argument
Raising the cap from $25.0 million to $100.0 million is too high. Increasing the maximum to this extent would encourage development only to larger corporations and entities.

Response: The price to purchase property and the cost of construction has increased. Additionally, new construction projects have a higher cost opposed to acquisition rehabilitation projects and, according to testimony before the Senate Committee on Housing and Human Services, Michigan's housing industry needs the production of new units to address the housing crisis. Larger projects yield the greatest number of units, which the State needs. The production of new units and large developments are more likely to exceed the current $25.0 million limit.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill would have a fiscal impact on MSHDA and no fiscal impact on the State or local units of government. Expanding multifamily housing to independent living, congregate care, or assisted living facilities and increasing the total loan amount to $100.0 million could increase the number of multifamily housing projects approved under the bonding authority of MSHDA. The total amount of bonds that MSHDA could issue would still be capped at $5.0 billion, which means the expansion of multifamily housing projects would not increase the overall bonding issuances of MSHDA. The Authority could experience additional administrative expenses in the unit that processes applications for multifamily housing projects, which would be covered by either additional administrative fee revenue or MSHDA's general restricted revenue. The Authority does not receive any State General Fund appropriations and its bonding is not backed or obligated by the State. Therefore, the bill would have no fiscal impact on the overall State budget.

Fiscal Analyst: Cory Savino, PhD

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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.