

SENATE BILL No. 1169

March 5, 2002, Introduced by Senator SMITH and referred to the Committee on Finance.

A bill to amend 1966 PA 346, entitled "State housing development authority act of 1966," by amending sections 22 and 25 (MCL 125.1422 and 125.1425), section 22 as amended by 1999 PA 131 and section 25 as amended by 1993 PA 220.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

1 (b) To undertake and carry out studies and analyses of
2 housing needs within this state and ways of meeting those needs,
3 including data with respect to population and family groups, the
4 distribution of population and family groups according to income,
5 and the amount and quality of available housing and its distribu-
6 tion according to rentals and sales prices, employment, wages,
7 and other factors affecting housing needs and the meeting of
8 housing needs; to make the results of those studies and analyses
9 available to the public and the housing and supply industries;
10 and to engage in research and disseminate information on
11 housing.

12 (c) To agree and comply with conditions attached to federal
13 financial assistance.

14 (d) To survey and investigate housing conditions and needs,
15 both urban and rural, throughout this state and make recommenda-
16 tions to the governor and the legislature regarding legislation
17 and other measures necessary or advisable to alleviate any exist-
18 ing housing shortage in this state.

19 (e) To establish and collect fees and charges in connection
20 with the sale of the authority's publications and the authority's
21 loans, commitments, and servicing, including but not limited to
22 the reimbursement of costs of financing by the authority, service
23 charges, and insurance premiums as the authority determines to be
24 reasonable and as approved by the authority. Fees and charges
25 shall be determined by the authority and shall not be considered
26 to be interest. The authority may use any accumulated fees and
27 charges and interest income for achieving any of the corporate

1 purposes of the authority, to the extent that the fees, charges,
2 and interest income are not pledged to the repayment of bonds and
3 notes of the authority or the interest on those bonds and notes.

4 (f) To encourage community organizations to assist in initi-
5 ating housing projects as provided in this act.

6 (g) To encourage the salvage of all possible usable housing
7 scheduled for demolition because of highway, school, urban renew-
8 al, or other programs by seeking authority for the sponsors of
9 the programs to use funds provided for the demolition of the
10 buildings, to be allocated to those sponsors approved by the
11 authority to defray moving and rehabilitation costs of the
12 buildings.

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

20 (i) To make or purchase loans, including loans for condomin-
21 ium units as defined in section 4 of the condominium act, 1978 PA
22 59, MCL 559.104, and including loans to mortgage lenders, which
23 are unsecured or the repayments of which are secured by mort-
24 gages, security interests, or other forms of security; to pur-
25 chase and enter into commitments for the purchase of securities,
26 certificates of deposits, time deposits, or mortgage loans from
27 mortgage lenders; to participate in the making or purchasing of

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

1 (j) To set standards for housing projects that receive loans
2 under this act and to provide for inspections to determine com-
3 pliance with those standards. The standards for construction and
4 rehabilitation of mobile homes, mobile home parks, and mobile
5 home condominium projects shall be established jointly by the
6 authority and the mobile home commission, created in the mobile
7 home commission act, 1987 PA 96, MCL 125.2301 to 125.2349.
8 However, financing standards shall be established solely by the
9 authority.

10 (k) To accept gifts, grants, loans, appropriations, or other
11 aid from the federal, state, or local government, from a subdivi-
12 sion, agency, or instrumentality of a federal, state, or local
13 government, or from a person, corporation, firm, or other
14 organization.

15 (l) To acquire or contract to acquire from a person, firm,
16 corporation, municipality, or federal or state agency, by grant,
17 purchase, or otherwise, leaseholds or real or personal property,
18 or any interest in a leasehold or real or personal property; to
19 own, hold, clear, improve, and rehabilitate and to sell, assign,
20 exchange, transfer, convey, lease, mortgage, or otherwise dispose
21 of or encumber any interest in a leasehold or real or personal
22 property. This act shall not impede the operation and effect of
23 local zoning, building, and housing ordinances, ordinances relat-
24 ing to subdivision control, land development, or fire prevention,
25 or other ordinances having to do with housing or the development
26 of housing.

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

3 (n) To invest, at the discretion of the authority, funds
4 held in reserve or sinking funds, or ~~moneys~~ MONEY not required
5 for immediate use or disbursement, in obligations of this state
6 or of the United States, in obligations the principal and inter-
7 est of which are guaranteed by this state or the United States,
8 or in other obligations ~~as may be~~ approved by the state
9 treasurer.

10 (o) To promulgate rules necessary to carry out the purposes
11 of this act and to exercise the powers expressly granted in this
12 act in accordance with the administrative procedures act of 1969,
13 1969 PA 306, MCL 24.201 to 24.328.

14 (p) To enter into agreements with nonprofit housing corpora-
15 tions, consumer housing cooperatives, limited dividend housing
16 corporations, mobile home park corporations, and mobile home park
17 associations that provide for regulation by the authority of the
18 planning, development, and management of any housing project
19 undertaken by nonprofit housing corporations, consumer housing
20 cooperatives, limited dividend housing corporations, mobile home
21 park corporations, and mobile home park associations and ~~which~~
22 THAT provide for the disposition of the property and franchises
23 of those corporations, cooperatives, and associations.

24 (q) To appoint to the board of directors of a nonprofit
25 housing corporation, consumer housing cooperative, limited divi-
26 dend housing corporation, mobile home park corporation, or mobile
27 home park association, a number of new directors sufficient to

1 constitute a majority of the board notwithstanding other
2 provisions of the articles of incorporation or other provisions
3 of law. Directors appointed under this subsection need not be
4 stockholders or members or meet other qualifications that may be
5 described by the certificate of incorporation or bylaws. In the
6 absence of fraud or bad faith, directors appointed under this
7 subsection shall not be personally liable for debts, obligations,
8 or liabilities of the corporation or association. The authority
9 may appoint directors under this subsection only if 1 or more of
10 the following occur:

11 (i) The nonprofit housing corporation, consumer housing
12 cooperative, limited dividend housing corporation, mobile home
13 park corporation, or mobile home park association has received a
14 loan or advance, as provided for in this act, and the authority
15 determines that the loan or advance is in jeopardy of not being
16 repaid.

17 (ii) The nonprofit housing corporation, consumer housing
18 cooperative, limited dividend housing corporation, mobile home
19 park corporation, or mobile home park association received a loan
20 or advance as provided for in this act and the authority deter-
21 mines that the proposed housing project for which the loan or
22 advance was made is in jeopardy of not being constructed.

23 (iii) The authority determines that some part of the net
24 income or net earnings of the nonprofit housing corporation is
25 inuring to the benefit of a private individual, firm, corpora-
26 tion, partnership, or association; the authority determines that
27 an unreasonable part of the net income or net earnings of the

1 consumer housing cooperative is inuring to the benefit of a
2 private individual, firm, corporation, partnership, or associa-
3 tion; or the authority determines that some part of the net
4 income or net earnings of the limited dividend housing corpora-
5 tion, in excess of that permitted by other provisions of this
6 act, is inuring to the benefit of a private individual, firm,
7 corporation, partnership, or association.

8 (iv) The authority determines that the nonprofit corporation
9 or consumer housing cooperative is in some manner controlled by,
10 under the direction of, or acting in the substantial interest of
11 a private individual, firm, corporation, partnership, or associa-
12 tion seeking to derive benefit or gain from, or seeking to elimi-
13 nate or minimize losses in any dealings or transactions with, the
14 nonprofit corporation or consumer housing cooperative. However,
15 this subparagraph shall apply to individual cooperators in con-
16 sumer housing cooperatives only in circumstances defined by the
17 authority in its rules.

18 (v) The authority determines that the nonprofit housing cor-
19 poration, consumer housing cooperative, limited dividend housing
20 corporation, mobile home park corporation, or mobile home park
21 association is in violation of the rules promulgated under this
22 section.

23 (vi) The authority determines that the nonprofit housing
24 corporation, consumer housing cooperative, limited dividend hous-
25 ing corporation, mobile home park corporation, or mobile home
26 park association is in violation of 1 or more agreements entered
27 into with the authority that provide for regulation by the

1 authority of the planning, development, and management of a
2 housing project undertaken by the nonprofit housing corporation,
3 consumer housing cooperative, limited dividend housing corpora-
4 tion, mobile home park corporation, or mobile home park associa-
5 tion or that provide for the disposition of the property and
6 franchises of the corporation, or cooperative, or association.

7 (r) To give approval or consent to the articles of incorpo-
8 ration submitted to the authority by a corporation seeking
9 approval as a nonprofit housing corporation, consumer housing
10 cooperative, limited dividend housing corporation, or mobile home
11 park corporation under chapter 4, 5, 6, or 8; to give approval or
12 consent to the partnership agreement, joint venture agreement,
13 trust agreement, or other document of basic organization of a
14 limited dividend housing association under chapter 7 or mobile
15 home park association under chapter 9.

16 (s) To engage the services of private consultants on a con-
17 tract basis for rendering professional and technical assistance
18 and advice.

19 (t) To lease real or personal property and to accept federal
20 funds for, and participate in, federal programs of housing
21 assistance.

22 (u) To review and approve rental charges for
23 authority-financed housing projects and require whatever changes
24 the authority determines to be necessary. The changes shall
25 become effective after not less than 30 days' written notice is
26 given to the residents of the affected authority-financed housing
27 projects.

1 (v) To set forth in the various loan documents of the
2 authority those restrictions on the sale, conveyance by land con-
3 tract, or transfer of residential real property, housing
4 projects, or housing units for which a note is held by the
5 authority and restrictions on the assumption by subsequent pur-
6 chasers of loans originated by and held by, or originated for
7 purchase by and held by, the authority as the authority deter-
8 mines to be necessary in order to comply with requirements of
9 federal statutes, federal rules or regulations promulgated under
10 sections 551 to 559 of title 5 of the United States Code, 5
11 U.S.C. 551 to 559, state statutes, or state rules promulgated
12 under the administrative procedures act of 1969, 1969 PA 306, MCL
13 24.201 to 24.328, or to obtain and maintain the tax exempt status
14 of authority bonds and notes. However, the authority shall not
15 use a due on sale or acceleration clause solely for the purpose
16 of renegotiating the interest rate on a loan made with respect to
17 an owner-occupied single-family housing unit. Without limiting
18 the authority's power to establish other restrictions, as pro-
19 vided in this section, on the sale, conveyance by land contract,
20 or transfer of residential real property, housing projects, or
21 housing units for which a note is held by the authority and the
22 assumption by subsequent purchasers of loans made or purchased by
23 the authority, the authority shall provide in its loan documents
24 relating to a single family loan that the single family loan may
25 be assumed by a new purchaser only when the new purchaser quali-
26 fies under the authority income limitations rules except where
27 such a restriction diminishes or precludes the insurance or a

1 guarantee by an agency of the federal government with respect to
2 the single family loan. A loan made for a mobile home that the
3 borrower does not intend to permanently affix to real property
4 shall become immediately due and payable in the event the mobile
5 home is moved out of the state. Any restrictions on conveyance
6 by sale, conveyance by land contract, or transfer that are autho-
7 rized in this section shall apply only to loans originated by and
8 held by, or originated for purchase by and held by, the authority
9 and may, at the option of the authority, be enforced by acceler-
10 ating and declaring immediately due and payable all sums evi-
11 denced by the note held by the authority. An acceleration and
12 declaration of all sums to be due and payable on conveyance by
13 sale, land contract, or transfer is not an unreasonable restraint
14 on alienation. An acceleration and declaration, unless otherwise
15 prohibited in this subdivision, of all sums to be due and payable
16 under this subdivision is enforceable in any court of competent
17 jurisdiction. This subdivision is applicable to secured and
18 unsecured loans. This subdivision is also applicable to loan
19 documents utilized in conjunction with an authority-operated pro-
20 gram of residential rehabilitation by an entity cooperating or
21 participating with the authority under section 22a(4), which
22 loans are originated with the intent to sell those loans to the
23 authority.

24 (w) To set forth in the various loan documents of the
25 authority those remedies for the making of a false statement,
26 representation, or pretense or a material misstatement by a
27 borrower during the loan application process. Without limiting

1 the authority's power to pursue other remedies, the authority
2 shall provide in its loan documents that, if a borrower makes a
3 false statement, representation, or pretense or a material mis-
4 statement during the loan application process, the authority, at
5 its option, may accelerate and declare immediately due and pay-
6 able all sums evidenced by the note held by the authority. An
7 acceleration and declaration of all sums to be due as authorized
8 under this subdivision and payable as provided in this subdivi-
9 sion is enforceable in any court of competent jurisdiction. This
10 subdivision is applicable to secured and unsecured loans.

11 (x) To collect interest on a real estate loan, the primary
12 security for which is not a first lien on real estate, at the
13 rate of 15% or less per annum on the unpaid balance. This subdivi-
14 sion does not impair the validity of a transaction or rate of
15 interest that is lawful without regard to this subdivision.

16 (y) To encourage and engage or participate in programs to
17 accomplish the preservation of housing in this state available
18 for occupancy by persons and families of low or moderate income.

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

23 (aa) To enter into interest rate exchanges or swaps, hedges,
24 or similar agreements with respect to its bonds or notes in the
25 same manner and subject to the same limitations and conditions
26 provided for a municipality in ~~section 15 of chapter III of the~~

1 ~~municipal finance act, 1943 PA 202, MCL 133.15~~ THE REVISED
2 MUNICIPAL FINANCE ACT, 2001 PA 34, MCL 141.2101 TO 141.2821.

3 (bb) To make working capital loans to contractors or subcon-
4 tractors on housing projects financed by the authority. The
5 authority shall submit an annual report to the legislature con-
6 taining the amount, recipient, duration, circumstance, and other
7 related statistics for each capital loan made to a contractor or
8 subcontractor under this subdivision. The authority shall
9 include in the report statistics related to the cost of improve-
10 ments made to adapt property for use by disabled individuals as
11 provided in section 32b(5) or (6) or section 44(2)(a).

12 (cc) Subject to rules of the civil service commission, to
13 adopt a code of ethics with respect to its employees that
14 requires disclosure of financial interests, defines and precludes
15 conflicts of interest, and establishes reasonable post-employment
16 restrictions for a period of up to 1 year after an employee ter-
17 minates employment with the authority.

18 (dd) To impose covenants running with the land in order to
19 satisfy requirements of applicable federal law with respect to
20 housing assisted or to be assisted through federal programs such
21 as the low income housing tax credit program or the home invest-
22 ment partnerships program by executing and recording regulatory
23 agreements between the authority or such municipality or other
24 entity as may be designated by the authority and the person or
25 entity to be bound. These covenants shall run with the land and
26 be effective with respect to the parties making the covenants and
27 other intended beneficiaries of the covenants, even though there

1 is no privity of estate or privity of contract ~~as~~ between the
2 authority and the persons or entities to be bound.

3 (ee) To impose covenants running with the land in order to
4 satisfy requirements of applicable state or federal law with
5 respect to housing financed by the authority by executing and
6 recording regulatory agreements between the authority and the
7 person or entity to be bound. These covenants shall run with the
8 land and be effective with respect to the parties making the cov-
9 enants and other intended beneficiaries of the covenants, even
10 though there is no privity of estate or privity of contract ~~as~~
11 between the authority and the persons or entities to be bound.
12 With respect to the application of any applicable environmental
13 laws, this subdivision shall not be construed to grant to the
14 authority any additional rights, privileges, or immunities not
15 otherwise afforded to a private lender that is not in the chain
16 of title for the land.

17 (ff) To participate in programs designed to assist persons
18 and families whose incomes do not exceed 115% of the greater of
19 statewide median gross income or the area median gross income
20 become homeowners where loans are made by private lenders for
21 purchase by the government national mortgage association, federal
22 national mortgage association, federal home loan mortgage corpo-
23 ration, or other federally chartered organizations.
24 Participation may include providing or funding homeownership
25 counseling and providing some or all of a reserve fund to be used
26 to pay for losses in excess of insurance coverage.

1 (gg) To invest up to 20% of funds held by or for the
2 authority in escrow accounts for the benefit of the authority or
3 mortgagors of authority-financed housing in loans originated or
4 purchased by the authority, under the conditions prescribed in
5 this subdivision and without the consent of the escrow
6 depositors. In connection with loans described in this subdivi-
7 sion, the authority may charge and retain fees in amounts similar
8 to those charged with respect to similar loans for which the
9 source of funding does not come from escrow funds. The invest-
10 ment authorized by this subdivision shall not be made unless both
11 of the following requirements are met:

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

16 (ii) The authority agrees to repurchase from its own funds
17 and at the same prices at which the loans were sold to the escrow
18 funds, as adjusted for the accretion of discount or amortization
19 of premium, plus accrued interest, any loans that become delin-
20 quent in excess of 30 days. This subdivision does not obligate
21 the authority to purchase a delinquent loan so long as with
22 respect to that loan the authority advances money from its own
23 funds in the amount of the delinquent payments. The authority's
24 election to advance payments does not in any manner abate or cure
25 the delinquency of the loan and the authority may resort to any
26 remedies that would exist in the absence of that payment.

1 (hh) To acquire, develop, rehabilitate, own, operate, and
2 enter into contracts with respect to the management and operation
3 of real and personal property to use as office facilities by the
4 authority and to enter into leases with respect to facilities not
5 immediately necessary for the activities of the authority.

6 (ii) To make loans to certain qualified buyers and resident
7 organizations and to make grants to resident organizations as
8 provided in the following:

9 (i) The urban homestead act, 1999 PA 127, MCL 125.2701 TO
10 125.2709.

11 (ii) The urban homesteading on vacant land act, 1999 PA 129,
12 MCL 125.2741 TO 125.2748.

13 (iii) The urban homesteading in single-family public housing
14 act, 1999 PA 128, MCL 125.2761 TO 125.2770.

15 (iv) The urban homesteading in multifamily public housing
16 act, 1999 PA 84, MCL 125.2721 TO 125.2734.

17 Sec. 25. (1) The authority may issue its negotiable bonds
18 and notes in a principal amount, which in the opinion of the
19 authority shall be necessary to provide sufficient funds for
20 achieving its corporate purposes, including the making of loans
21 for housing projects and the making or purchasing of loans for
22 the rehabilitation of residential real property, the provision of
23 money for the land acquisition and development fund as provided
24 in this act, the payment of interest on bonds and notes of the
25 authority during construction, the establishment of reserves to
26 secure bonds and notes, the provision of money for the housing
27 development fund in order to make noninterest bearing advances to

1 nonprofit housing corporations and consumer housing cooperatives
2 as provided in this act, the provision of money to be used for
3 the land acquisition and development powers and purposes of the
4 authority, the development, rehabilitation, or acquisition of
5 real and personal property for use as office facilities by the
6 authority, and all other expenditures of the authority incident
7 to and necessary or convenient to carry out its corporate pur-
8 poses and powers.

9 (2) The authority may issue renewal notes, issue bonds to
10 pay notes, and when it determines refunding expedient, refund
11 bonds by the issuance of new bonds, whether the bonds to be
12 refunded have or have not matured, and issue bonds partly to
13 refund bonds then outstanding and partly for any other purpose.
14 The refunding bonds shall be sold and the proceeds applied to the
15 purchase, redemption, or payment of the bonds to be refunded.
16 The authority may issue instruments separate from the obligations
17 described in this section that establish a contractual right in
18 the holder of the instrument to require mandatory tender for pur-
19 chase of the obligations to which the instrument applies for such
20 period of time and subject to such provisions as the authority
21 may determine.

22 (3) Except as may otherwise be expressly provided by the
23 authority, every issue of its notes or bonds shall be general
24 obligations of the authority payable out of revenues or money of
25 the authority, subject only to agreements with the holders of
26 particular notes or bonds pledging any particular receipts or
27 revenues.

1 (4) Whether or not the notes or bonds are of a form or
2 character as to be negotiable instruments under the uniform com-
3 mercial code, 1962 PA 174, MCL 440.1101 TO 440.11102, the notes
4 or bonds shall be and are hereby made negotiable instruments
5 within the meaning of and for all the purposes of the uniform
6 commercial code, 1962 PA 174, MCL 440.1101 TO 440.11102, subject
7 only to the provisions of the notes or bonds for registration.

8 (5) ~~Unless an exception is available pursuant to subsection~~
9 ~~(6), a~~ A bond issued by the authority ~~shall be approved by the~~
10 ~~municipal finance commission or its successor agency but, except~~
11 ~~as provided by subsection (6), shall not otherwise be subject to~~
12 ~~the municipal finance act, Act No. 202 of the Public Acts of~~
13 ~~1943, as amended, being sections 131.1 to 139.3 of the Michigan~~
14 ~~Compiled Laws~~ IS NOT SUBJECT TO THE REVISED MUNICIPAL FINANCE
15 ACT, 2001 PA 34, MCL 141.2101 TO 141.2821.

16 ~~(6) The requirement of subsection (5) for obtaining the~~
17 ~~prior approval of the municipal finance commission or its succes-~~
18 ~~sor agency before issuing bonds under this section shall be~~
19 ~~subject to sections 10 and 11 of chapter III of Act No. 202 of~~
20 ~~the Public Acts of 1943, being sections 133.10 and 133.11 of the~~
21 ~~Michigan Compiled Laws, and the department of treasury shall have~~
22 ~~the same authority as provided by section 11 of chapter III of~~
23 ~~Act No. 202 of the Public Acts of 1943 to issue an order provid-~~
24 ~~ing or denying an exception from the prior approval required by~~
25 ~~subsection (5) for bonds authorized by this section.~~

26 (6) THE ISSUANCE OF BONDS AND NOTES UNDER THIS ACT IS
27 SUBJECT TO THE AGENCY FINANCING REPORTING ACT.