

MSHDA SUPPORTIVE HOUSING PROGRAM

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Senate Bill 1147 (Substitute S-1)

Sponsor: Sen. Mark Jansen

House Committee: Intergovernmental and Regional Affairs

Senate Committee: Finance

First Analysis (6-30-10)

BRIEF SUMMARY: The bill would revise the supportive housing program to limit the number of individual living units that the Michigan State Housing Development Authority may certify to 250 each year; limit the number of living units certified in a county to 62; set state and local filing deadlines; define "individual living unit"; include property owned by a nonprofit housing corporation in the definition of "supportive housing property"; and delete a provision allowing appeals to the circuit court.

FISCAL IMPACT: The bill would have no material fiscal impact on the Michigan State Housing Development Authority which certifies supportive housing projects as being eligible for the exemption from the 18-mill property tax levied for school operating purposes. For further information, see *Fiscal Information*.

THE APPARENT PROBLEM:

In 2008, legislation was enacted to exempt "supportive housing property" from the tax levied by local school districts for school operating purposes.

Supportive housing property essentially is scattered-site housing owned by a nonprofit organization and occupied by low-income individuals with disabilities.

To claim the exemption, a property owner must submit an affidavit form to the Michigan State Housing Development Authority for certification of the property, and file a certified notification (or affidavit) with the local taxing assessor.

Now that the law has been implemented, several clarifications have been suggested. One concern involves a limit on the total number of living units that the Michigan State Housing Development Authority may certify. Although one provision refers to "the 250 living units authorized...", the law does not actually set a cap of 250, or otherwise.

Second, the law provides that supportive housing may not have more than six individual living units, but there apparently has been some confusion about what constitutes a living unit.

The third concern involves the time line for property owners to submit affidavit forms to MSHDA and file certified notifications with local assessors.

To clarify these matters, legislation has been introduced in both chambers--House Bill 6098 and Senate Bill 1147--that would modify the law. See *Background Information*.

THE CONTENT OF THE BILL:

The bill would amend the State Housing Development Authority Act to do the following in regard to supportive housing property:

- Limit the number of individual living units that the Michigan State Housing Development Authority may certify to 250 each year.
- Limit the number of living units certified in a county to 62, and provide for the certification of additional units among counties that had reached that cap, subject to the 250 maximum.
- Set a deadline for an affidavit form to be submitted to MSHDA for certification, and revise the deadline for an affidavit to be submitted to the local assessing officer.
- Define "individual living unit," and include property owned by a nonprofit housing corporation in the definition of "supportive housing property."
- Delete a provision allowing certification or the denial of certification to be appealed to the circuit court.

The act defines "supportive housing property" as property that meets the following criteria:

- It is owned by an organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (IRC).
- It consists of not more than six individual living units.
- All living units are occupied by one or more people whose individual income is at or below 30 percent of the median income and who individually receive services for at least one hour per month from an organization identified above.

The bill would define "individual living unit" as an accommodation containing a living area, one to four sleeping areas, bathing and sanitation facilities, and cooking facilities equipped with a cooking range, refrigerator, and sink, all of which are separate and distinct from any other accommodations. An individual living unit could be served by heating or cooling facilities that also serve additional units. An individual living unit could not provide housing for more than six individuals.

In addition, the bill would modify the definition of "supportive housing property" so that the term would mean property that was owned either by an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, ***or by a nonprofit housing corporation organized under Chapter 4*** of the act.

The act requires the owner of supportive housing property to submit a completed affidavit form to MSHDA for certification that the property is supportive housing property. The owner then must file the certified affidavit with the local assessing officer before November 1 of the year before the tax year in which the exemption is to begin.

Under the bill, the completed affidavit form would have to be submitted to MSHDA before November 1 of the year before the tax year in which the exemption would begin, and the certified affidavit would have to be filed with the local assessing officer before December 1 of the tax year in which the exemption would begin. The authority could not accept any affidavit filed with it for certification on or after November 1 of any year.

Currently, not more than 25 percent of the number of living units certified as supportive housing property for a year may be in a single county. If by October 1 of a year the total number of living units for that year is below the 250 living units authorized, MSHDA may certify living units on a first-come, first-served basis in counties that received 25 percent of the living units for the year.

The bill, instead, would prohibit MSHDA from certifying more than 250 individual living units in each year. Not more than 62 units certified for a year could be from a single county. If by November 1 of a year the total number of living units certified for that year were under 250, MSHDA could certify additional living units in a county that had previously reached the 62-unit limit, subject to the statewide limit of 250 living units. This certification would have to be on a first-come, first-served basis, based on affidavits filed with MSHDA before November 1 of that year, but after the county involved reached the 62-unit limit.

If MSHDA could not certify all of the affidavits without reaching the 250-unit limit, and the date and time of the filing of those affidavits did not establish which were filed earliest, MSHDA could select and certify affidavits within that group randomly, keeping a balance of certified units among counties that had more than 62 certified units.

Under the act, an owner of property for which certification is denied, or a local unit of government in which certified property is located, may appeal MSHDA's determination to the circuit court of the county where the property is located. The bill would delete this provision.

MCL 125.1459 & 125.1459a

HOUSE COMMITTEE ACTION:

The House Committee on Intergovernmental and Regional Affairs reported out the Senate-passed version of Senate Bill 1147 without amendments.

BACKGROUND INFORMATION:

Identical House Bill. Senate Bill 1147 is identical to House Bill 6098 which was reported out of the Intergovernmental and Regional Affairs Committee on May 11, 2010, and then passed the House of Representatives by a vote of 103 to 4 on May 19, 2010. That bill currently awaits action in the Senate Finance Committee.

MSHDA Supportive Housing Program. Public Act 454 of 2008 amended the General Property Tax Act to exempt supportive housing property from the tax levied by a local school district for school operating purposes to the extent provided under the Revised

School Code, if the property owner claims an exemption by filing an affidavit with the local tax collecting unit.

Public Act 455 of 2008 amended the Revised School Code to exempt supportive housing property from the mills levied for school operating purposes, and to allow the board of a school district to exempt supportive housing property from some or all of the additional mills that the board is authorized to levy.

Public Act 456 of 2008 amended the State Housing Development Authority Act to define "supportive housing property" and establish the process for property owners to obtain certification by MSHDA and file notification with local assessors. Because Public Act 456 was tie-barred to a bill that was not enacted, Public Act 127 of 2009 deleted that tie-bar, enabling the property tax exemption to be implemented. Public Act 127 took effect on October 29, 2009.

The original legislation was enacted following an April 2008 decision of the Michigan Supreme Court. In *Liberty Hill Housing Corporation v City of Livonia* (480 Mich 44), the Court upheld rulings of the Michigan Tax Tribunal and the Court of Appeals that an existing property tax exemption did not apply to property leased to tenants. Specifically, Section 7o(1) of the General Property Tax Act exempts property "owned and occupied" by a nonprofit charitable institution while occupied by that charitable institution solely for the purposes for which it was incorporated. The Tax Tribunal, Court of Appeals, and Supreme Court all agreed that the city had properly denied an exemption for property owned by Liberty Hill and leased by it to low-income individuals or individuals with disabilities under traditional lease agreements, because Liberty Hill did not "occupy" the property.

Information in this analysis is derived from the analysis from the Senate Fiscal Agency dated 6-15-10.

FISCAL INFORMATION:

The bill would have no material fiscal impact on the Michigan State Housing Development Authority (MSHDA), which certifies supportive housing projects as being eligible for the exemption from the 18-mill property tax levied for school operating purposes. Expanding the type of entities (nonprofit housing corporations) that may own supportive housing that is eligible for the tax exemption would increase the workload of MSHDA staff, although any resulting increase could be carried out within existing staffing and budgetary resources.

To date, MSHDA has certified 99 eligible supportive housing properties, encompassing 323 individual living units as being eligible for the tax exemption. These properties are located in six counties, as shown in the chart on the following page.

	Properties		Individual Units	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Ingham	1	1.0%	6	1.9%
Kalamazoo	3	3.0%	5	1.5%
Macomb	10	10.1%	21	6.5%
Oakland	25	25.3%	113	35.0%
Ottawa	2	2.0%	4	1.2%
Wayne	58	58.6%	174	53.9%
Total	99	100.0%	323	100.0%

Source: MSHDA

ARGUMENTS:

For:

After *Liberty Hill* was decided, Public Acts 454, 455, and 456 of 2008 were enacted to provide limited tax relief to owners of supportive housing property, recognizing the need to make safe, affordable housing available to low-income individuals with disabilities. (See *Background Information*.) Rather than fully exempting supportive housing property from the property tax, the legislation created an exemption from the mills levied for school operating purposes—providing for the property to be taxed the same as a principal residence.

While it is important to provide property tax relief to the owners of supportive housing, an unlimited number of exemptions potentially could impose a burden on property tax collections, and ultimately on the state, which reimburses lost school operating tax revenue. An annual cap of 250 living units had been proposed in earlier versions of the legislation that became Public Act 456, but language setting a specific limit was inadvertently omitted from the final version, although the legislation continued to refer to "the 250 living units authorized." Senate Bill 1147 (S-1) would rectify this by setting a clear maximum of 250 on the number of individual living units that MSHDA may certify each year.

In 2009, MSHDA certified just over 300 living units. Because these living units will retain their exemption until they no longer qualify as supportive housing property, the 250 cap on additional living units certified each year in the future would not unreasonably limit the quantity of supportive housing property that may benefit from the tax exemption.

The bill also would clearly provide for the distribution of certifications among counties that had reached their 62-unit limit, if the 250 annual maximum were not reached.

Although current law allows MSHDA to certify additional units in a county that has reached the limit of 25 percent in a single county, it is not clear what the 25 percent is a percentage of, because there is no express cap. The language in the bill would provide clarification and ensure that, if MSHDA had not certified all 250 allowed for a year by November 1, the remaining exemptions would not have to go unused. In addition, the bill would delete unnecessary language under which MSHDA's determination to certify property or deny certification may be appealed to the circuit court. When MSHDA receives an application, it simply determines whether the statutory criteria are met and issues or denies certification accordingly. Since there is no discretionary decision-making, a property owner or local unit would have no reason to appeal the determination in court.

For:

Under the act, supportive housing property may not consist of more than six individual living units, but precisely what an "individual living unit" consists of is not clear. A property owner, for example, might think that a three-bedroom apartment or house is three individual living units, instead of one. The proposed definition of "individual living unit" would bring clarity to the law and ensure that property owners and MSHDA interpret it in the same way.

For:

The proposed time line for property owners to submit affidavit forms to MSHDA and file certified notifications (affidavits) with local assessors should facilitate the process for all concerned. Currently, owners must file notifications by November 1, but there is no deadline for submitting affidavit forms to MSHDA. If a property owner waits until sometime in October before submitting a form to MSHDA, there is little time for the Authority to make its determination and for the owner to file with the assessor before November 1. The bill would require property owners to submit affidavit forms to MSHDA before November 1 and file certified notifications with local assessors before December 1, providing for at least a month between those actions.

POSITIONS:

The Michigan State Housing Development Authority supports the bill. (6-29-10)

The Community Economic Development Association of Michigan (CEDAM) supports the bill. (6-29-10)

The Michigan Municipal League supports the bill. (6-29-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.