




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



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1147 (Substitute S-1 as reported)  
Sponsor: Senator Mark C. Jansen  
Committee: Finance

(as enacted)

Date Completed: 6-15-10

### **RATIONALE**

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 (MSHDA) for certification of the property, and file a certified notification (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 MSHDA may certify. Although one provision refers to "the 250 living units authorized...", the law does not actually set a cap of 250, or otherwise. Also, 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. Another area of concern involves the time line for property owners to submit affidavit forms to MSHDA and file certified notifications with local assessors.

### **CONTENT**

**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% 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.

Also, the property would have to be owned either by an organization exempt from taxation under Section 501(c)(3) of the IRC, 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% 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 fewer than the 250 living units authorized, MSHDA may certify living units on a first-come, first-served basis in counties that received 25% 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 fewer than 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

## **BACKGROUND**

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 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.

## **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**

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. 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 it 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% in a single county, it is not clear what the 25% 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 did 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.

### **Supporting Argument**

Under the Act, supportive housing property may not consist of more than six individual living units, but 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.

### **Supporting Argument**

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.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

To the extent that the legislation led to a higher level of investment in supportive housing unit facilities and dwellings than otherwise would have occurred, the additional activity would represent a potential loss of school operating taxes within the affected jurisdictions. The State also would potentially incur increased expenditures due to the need to replace lost school operating property taxes.

The bill would have no fiscal impact on MSHDA, which already has a system in place to certify supportive housing units.

Fiscal Analyst: Elizabeth Pratt  
Eric Scorsone  
Maria Tyszkiewicz

#### A0910\1147a

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.