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BILL ANALYSIS

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Senate Bills 360 and 361 (as introduced 4-15-21)
Sponsor: Senator Roger Victory
Committee: Economic and Small Business Development

Date Completed: 4-29-21

CONTENT

Senate Bill 360 would amend the Income Tax Act to do the following:

-- **For tax years that begin on and after January 1, 2021, allow a taxpayer, or a taxpayer that was an employer, that made an eligible contribution to a local impact housing trust fund or that offered its employees the option to participate in a qualified employer-assisted housing project that met certain requirements to claim a credit against the tax imposed by Part 1 or Part 2 of the Act.**
-- **To claim the credit, require a taxpayer or employer to apply for approval of its employer-assisted housing project and certification of the eligible contributions made and costs incurred for the same during the tax year.**
-- **Specify that if the credit for the tax year and any unused carryforward of the credit exceed the tax liability of the taxpayer for the tax year, that portion that exceeded the tax liability of the taxpayer could not be refunded but could be carried forward to offset tax liability in subsequent tax years.**

Senate Bill 361 would amend the State Housing Development Authority Act to do the following:

-- **Grant the Michigan State Housing Development Authority (MSHDA) the power to determine the eligibility of contributions made to local impact housing trust funds and employer-assisted housing projects offered to employees and to issue certificates to persons for the basis of an income tax credit under Part 1 or Part 2 of the Income Tax Act as proposed in Senate Bill 360.**
-- **Require the MSHDA to develop an application and approval process in order to certify contributions and costs incurred by persons for employer-assisted housing projects and adopt a program to be used for approving contributions and employer-assisted housing projects.**
-- **Require the MSHDA to issue a certificate that included certain information each year to an eligible person.**

The bills are tie-barred.

Senate Bill 360

Definitions

Under the bill, "local impact housing trust fund" would mean a trust fund established by a local community as a means to find local solutions to affordable housing that dedicates and restricts its funds to invest in local housing projects and to provide affordable housing within the community.

"Qualified employer-assisted housing project" would mean a project provided and funded by the employer that offers down-payment assistance, reduced-interest mortgages, mortgage guarantee programs, rental subsidies, individual development account savings plans, or any other similar type of project approved by the authority, to its employees to assist in securing affordable housing near the workplace, and those projects are restricted to employees whose adjusted household income is not more than 120% of the area median income, as determined by the MSHDA.

"Eligible contribution" would mean any promise, grant, or payment of money or property of any kind or value, including a promise to pay, approved by the MSHDA.

"Adjusted household income" would mean that term as defined in R 125.101 of the Michigan Administrative Code: the gross annual income from all sources and before taxes or withholding of all members of a household living in a dwelling unit or housing unit after deducting all the following:

-- Unusual or temporary income of any member of the household.
-- Six hundred and fifty dollars for each member of the household.
-- Earnings of a member of a household who is under 18 years of age or who is physically or mentally handicapped.
-- Fifty percent of the income of a second adult wage earner jointly occupying the dwelling or housing unit whose individual income is less than that of the wage earner with the highest income.
-- The lesser of $1,000 or 10% of the gross annual income.

Tax credit

Generally, the Income Tax Act levies the State income tax on net income or certain commercial, business, and financial activities. Part 1 of the Act governs the individual income tax and Part 2 of the Act governs the corporate income tax. The bill would add the following language to Part 1 and Part 2 of the Act.

For tax years that began on and after January 1, 2021, a taxpayer or a taxpayer that was an employer that made an eligible contribution to a local impact housing trust fund or that offered its employees the option to participate in a qualified employer-assisted housing project that assisted its employees in securing affordable housing near the workplace could claim a credit against the tax imposed by Part 1 or Part 2 of the Act in an amount equal to 50% of the total eligible contributions made during the tax year to a local impact housing trust fund and 50% of the total costs incurred to provide and fund qualified employer-assisted housing projects for its employees.

However, concerning the tax imposed under Part 1 of the Act, if the employer were a flow-through entity and the taxpayer was a member of the flow-through entity, then the taxpayer could claim credit against the member's tax liability under Part 1 based on the member's proportionate share of ownership or an alternative method approved by the Department of Treasury. (The Act defines "flow-through entity" as an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company.)

Claiming the Credit

To claim the credit under Part 1 or Part 2 of the Act, the taxpayer or employer, in a form and manner as prescribed by the MSHDA, would have to apply for approval of its employer-assisted housing project and certification of the eligible contributions made and costs incurred for the same during the tax year. A taxpayer could not claim a credit under the bill unless the MSHDA had issued a certificate to the taxpayer. The taxpayer would have to attach the certificate to the annual return filed under Part 1 or Part 2 of the of the Act on which a credit was claimed.

The certificate required under the bill would have to state all the following:

-- The name of the taxpayer.
-- A description of each qualified employer-assisted housing project and the name of each local impact housing trust fund.
-- The amount of eligible contributions made to each local impact housing trust fund and the costs incurred to provide and fund a qualified employer-assisted housing project for the designated tax year and the amount of the credit that could be claimed for the designated tax year.
-- The taxpayer's Federal employer identification number or the Department of Treasury number assigned to the taxpayer.

Under the bill, concerning the tax imposed under Part 1 of the Act, for contributions made and costs incurred by an employer that was a flow-through entity and of which the taxpayer was a member, the certificate would have to state separately the amount of the credit that each taxpayer who was a member of the flow-through entity was allowed to claim for the designated tax year and that amount would have to be based on each member's proportionate share of ownership in that flow-through entity or an alternative method approved by the Department of Treasury.

<u>Carryforward</u>

Under the bill, if the credit for the tax year and any unused carryforward of the credit exceeded the tax liability of the taxpayer for the tax year, that portion that exceeded the tax liability of the taxpayer could not be refunded but could be carried forward to offset tax liability in subsequent tax years for 10 years or until used up, whichever occurred first.

<u>**Senate Bill 361**</u>

<u>MSHDA Powers</u>

Generally, the State Housing Development Authority Act creates the Michigan State Housing Development Authority and prescribes its powers and duties. The bill specifies that the MSHDA would have the power to determine the eligibility of contributions made to local impact housing trust funds and employer-assisted housing projects offered to employees and to issue certificates to entities for the basis of an income tax credit under Part 1 or Part 2 of the Income Tax Act as proposed in Senate Bill 360.

<u>Application and Approval Process</u>

Under the bill, the MSHDA would have to develop an application and approval process in order to certify contributions and costs incurred by entities for employer-assisted housing projects and adopt a program to be used for approving contributions and employer-assisted housing projects. The bill specifies that a person would be eligible for the credits as proposed in Senate Bill 360 upon reasonable proof of contributions made to a local impact housing trust fund and verification that the employer-assisted housing project satisfied the requirements proposed under Senate Bill 360.

Issuance of Certificate

The bill would require the MSHDA to issue a certificate each year to an eligible person that stated the following:

-- The name of the person, and if the person were a flow-through entity, the name of the member of the flow-through entity.
-- That the employer-assisted housing project was a qualified employer-assisted housing project and the name of each local impact housing trust fund to which contributions were made.
-- The taxpayer's Federal employer identification number or the Department of Treasury number assigned to the taxpayer.

In addition, the certificate would have to state the amount of eligible contributions made to a local impact housing trust fund and the costs incurred to provide and fund a qualified employer-assisted housing project for the designated tax year and the amount of the credit that could be claimed for the designated tax year. The bill specifies that for contributions made and costs incurred by an employer that was a flow-through entity, the certificate would have to state separately the amount of the credit that each person who was a member of the flow-through entity was allowed to claim for the designated tax year and that the amount would have to be based on each member's proportionate share of ownership in that flow-through entity or an alternative method approved by the Department of Treasury.

Proposed MCL 206.279 & 206.678 (S.B. 360) Legislative Analyst: Tyler VanHuyse
MCL 125.1422 et al. (S.B. 361)

FISCAL IMPACT

Senate Bill 360

The bill would reduce State corporate and individual income tax revenue to the General Fund and School Aid Fund by an unknown and potentially significant amount that would depend on the number of taxpayers that made eligible contributions and, because of the nonrefundability provisions, taxpayers' liability before credits.

Over the last several decades, a variety of states have had, proposed, or continue to offer credits similar to the credit proposed by the bill. Of those states, Illinois offers a credit that bears the greatest similarity to the one proposed by the bill. For fiscal year 2018-19, the Illinois credit reduced corporate income tax revenue by approximately $19.6 million and individual income tax revenue by approximately $1.3 million. Adjusted for the differences in tax rates between the two states, these figures imply a reduction in Michigan corporate income tax revenue of $9.6 million and Michigan individual income tax revenue of $1.1 million if one assumes a similar total for eligible contributions. If eligible contributions are reduced to reflect the relative sizes of the Michigan and Illinois economies, under the assumption that total eligible contributions would represent the same portion of the State economy, it would suggest a $5.8 million reduction in corporate income tax revenue and a $700,000 reduction in individual income tax revenue.

A similar credit was proposed in California in 2018, and adjusting the estimated fiscal impact for the relative size of the California and Michigan economies and tax rates would imply a revenue reduction more than $600 million dollars, although certain aspects of the estimated fiscal impact do not appear relevant or comparable to the proposed Michigan credit and would overestimate the likely impact in Michigan.

States such as Colorado, Tennessee, and Washington have considered similar credits. However, these proposals either have capped the maximum credit a taxpayer could receive, the total amount of credits that could be awarded in a given fiscal year, and/or the maximum contributions that could be eligible for the credit. Because the bill would not place any of these limits on taxpayers, the estimated fiscal impacts for these states' proposals are not relevant in estimating the fiscal impact of the bill.

In 2006, Connecticut repealed a similar credit that had been available for at least the preceding 10 years. While credit utilization was stable between 1995 and 1997, utilization of the credit declined steadily after 1997. Based on Connecticut's experience, and adjusting for the relative size of the state economies (but not relative tax rates nor inflation or revenue growth), suggests the impact could be as large as $1.1 million per year.

Because the credit would be nonrefundable and would be subject to a 10-year carry-forward period, the bill would not result in net payments from the State (such as those that can occur with refundable credits) and the actual amount of revenue reduction would depend on a taxpayers' tax liability before credits in any years in which the credit could be claimed.

Credits claimed under the corporate income tax would reduce General Fund revenue. Any credits claimed under the individual income tax would lower annual payments; thus, 23.8% of any revenue reduction would lower School Aid Fund revenue and the remaining amount would lower General Fund revenue.

Senate Bill 361

The bill would have a fiscal impact on the MSHDA and no fiscal impact on local units of government. The MSHDA would incur additional administrative expenses to process applications and certify employer-assisted housing projects and contributions. These costs would be incurred by the MSHDA and supported by restricted revenue generated by the MSHDA. Accordingly, the bill would have no fiscal impact on State funds.

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