House Legislative Analysis Section

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MSHDA ACT: GEN'L. AMENDMENTS

House Bill 6135 with committee amendment
First Analysis (11-27-90)

Sponsor: Rep. Teola P. Hunter
Committee: Urban Affairs

THE APPARENT PROBLEM:

The Michigan State Housing Development Authority (MSHDA) works to improve housing opportunities for people with low and moderate incomes by selling debt instruments in order to finance its various programs. The agency also administers federal programs that provide financial assistance on housing for low-income persons. In 1989 the legislature enacted various provisions under Public Act 220 which, among other things, increased MSHDA's debt ceiling from $3 billion to $3.2 billion and set higher maximum purchase price and gross income limits in order for persons to qualify under MSHDA's subsidized housing programs. These changes allowed more people to qualify and encouraged a greater number of requests for financing through MSHDA. As MSHDA is now close to the new debt limit set in 1989, it has requested raising the ceiling again — from $3.2 billion to $3.4 billion.

State and federal laws generally provide that liability for environmental contamination on property generally can be made to apply to all parties whose names fall in the "chain of title" to a contaminated piece of property. When MSHDA closes on a loan for a program participant (which may include an individual purchasing a home or a developer involved in providing low cost housing), it becomes one of the title holders so that it can enforce various federal rules which govern future use of the property. These "covenants running with the land" are used by MSHDA to ensure that any future use of a housing unit by a developer, for example, is consistent with MSHDA's purposes. Unfortunately, once it falls into the chain of title MSHDA could be held liable for environmental contamination that may be discovered, or that may occur, at a later date on the property, even though MSHDA itself did not cause the contamination. MSHDA has asked that it be allowed to continue to impose covenants running with the land without falling into the chain of title and thereby avoid potential liability for environmental damage (and its resulting costs) for which it was not responsible. The bill would address these concerns and would provide other general amendments to accommodate MSHDA in its goal of providing affordable housing for the state's lower income residents.

THE CONTENT OF THE BILL:

The bill would amend the state housing development authority act to increase MSHDA's debt capacity from $3.2 billion to $3.4 billion so that it could issue additional tax-free bonds for financing construction of and improvements on single-family homes that qualify under MSHDA's housing program. Among its other powers MSHDA could service, guarantee payment on, or repurchase a debt obligation related to the sale of an instrument or obligation which secured one or more loans, whether or not the debt instrument was in default. Also, subject to rules of the Civil Service Commission MSHDA could adopt a code of ethics (which applied to its employees) that required disclosure of financial interests, defined and precluded conflicts of interest, and set "reasonable" post-employment restrictions for up to one year after an employee stopped working with the agency.

MSHDA could impose "covenants running with the land" in order to satisfy state and federal laws that govern housing financed by, or federal programs administered by, MSHDA, by executing and recording regulatory agreements between MSHDA and the person or entity to be bound. The covenants would go with the land and would apply to the contracting parties and other intended beneficiaries of the covenants, even though there was no "privity of estate" or "privity of contract" (legal terms which refer to the relationship between two or more contracting parties) between MSHDA and the persons or entities to be bound. Finally, the bill would allow MSHDA to participate in programs designed to assist certain low-income persons or families (whose annual gross incomes fall below $36,500) under which loans are made by private lenders for purchase by the Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or other federally chartered organizations. Among other things, MSHDA could (in concert with these programs) provide or fund homeownership counseling and provide some or all of a reserve fund to be used to pay for losses that exceeded insurance coverage.

MCL 125.1422 et al.

FISCAL IMPLICATIONS:

According to MSHDA, the bill would not affect state or local budget expenditures as MSHDA is financed entirely through the sale of bonds and notes. (11-16-90)

ARGUMENTS:

For:

The bill would allow MSHDA to expand its role in serving the needs of lower income people looking for affordable housing by enabling it to sell additional notes and bonds to finance its housing programs. MSHDA's current debt ceiling of $3.2 billion will soon be reached as amendments made to the act under Public Act 220, which increased the limits on gross income and purchase price limits for qualifying, allowed more persons and houses to qualify for MSHDA financing. According to a MSHDA spokesman, the additional $200 million in outstanding debt which the bill would authorize would be used entirely to finance purchases of or improvements made to single family homes.

For:

After closing on one of its loans, MSHDA is included within the chain of title on the property so that it can ensure that the property will be used according to federal rules that require the property to house, for instance, a specific percentage of low income persons. Once in the chain of title, however, MSHDA risks becoming liable for environmental problems discovered on the

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property that resulted from past activities or that may occur in the future. Such liability could subject MSHDA to huge cleanup costs and other legal fees related to the problem even though it had no responsibility whatsoever in creating the conditions. The bill would allow MSHDA to continue to impose its "covenants running with the land" without itself being held liable as a title holder. In this way MSHDA could continue to serve the state's lower income residents without jeopardizing its own financial standing. In fact, MSHDA has in place an extensive environmental review process, patterned after similar federal housing programs, which it follows whenever assistance is obtained through one of its programs. The provision would not weaken these review standards but would help MSHDA avoid being held liable for conditions it did not cause.

Response: According to a spokesman from the attorney general's office, this provision may not hold up under a court challenge as it seems to contradict provisions found in other laws which provide only limited protection — for both private and public entities — from liability when environmental problems are discovered on a piece of property.

For:

Other provisions within the bill would authorize MSHDA to do the following:

- Language would be added to clarify that MSHDA could have its own code of ethics, subject to rules of the Civil Service Commission, which could include after-employment restrictions. Apparently, the attorney general's office has questioned the enforceability of the agency's current code and particularly its provisions regarding after-employment restrictions. Such restrictions seem appropriate in light of the potential for conflicts of interest that could occur when individuals leave MSHDA to work, for example, for a private developer or mortgage lender.
- MSHDA could sell loans made under its taxable bond program to the state pension fund. This provision, which apparently was requested by the state treasurer, would add to the types of debt instruments that MSHDA could use to raise capital for its programs. The provision specifies that MSHDA would be held responsible for payment on or repurchasing of the loan, whether or not it was in default.
- The bill would allow MSHDA to counsel and otherwise assist persons with gross annual incomes below $36,500 who participate in MSHDA's Michigan Initiative Partnership and similar programs that are financed through federally chartered organizations such as the Government National Mortgage Association. Not only would the provision allow MSHDA to offer or provide for the payment of counseling in these programs, it would allow MSHDA to use reserve funds to cover losses incurred on loans made by low income persons participating in the federal programs.

POSITIONS:

The Michigan State Housing Development Authority, an agency within the Department of Commerce, supports the bill. (11-16-90)

The Michigan Bankers Association has not yet taken a position on the bill. (11-20-90)

The Michigan League of Savings Institutions has not yet taken a position on the bill. (11-20-90)