

HOUSE BILL No. 5618

May 10, 2012, Introduced by Reps. Shaughnessy, Zorn and Wayne Schmidt and referred to the Committee on Commerce.

A bill to amend 1966 PA 346, entitled
"State housing development authority act of 1966,"
by amending section 44c (MCL 125.1444c), as amended by 2004 PA 535.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 44c. (1) If the resolution authorizing the issuance of
2 notes or bonds provides that the notes or bonds are limited and not
3 general obligations of the authority, are not secured by the
4 capital reserve capital account, and are secured solely by revenues
5 and property derived from or obtained in connection with the
6 housing project, the authority shall use the proceeds of those
7 notes or bonds to make loans directly, or indirectly by a loan
8 through a mortgage lender, to a nonprofit housing corporation,
9 consumer housing cooperative, limited dividend housing corporation,
10 limited dividend housing association, mobile home park corporation,

1 mobile home park association, or public body or agency for the
2 construction, rehabilitation, long-term financing or any
3 combination of construction, rehabilitation, or long-term financing
4 of any of the following:

5 (a) Multifamily housing projects for students or low income or
6 moderate income persons.

7 (b) Beginning May 1, 1984, multifamily housing projects ~~in~~
8 ~~eligible distressed areas~~ in which not less than 20% of the
9 dwelling units are allotted to individuals of low or moderate
10 income within the meaning of former section 103(b)(4)(A) of the
11 internal revenue code of 1954 and in which not more than 80% of the
12 dwelling units are available for occupancy without regard to
13 income.

14 (c) Social, recreational, commercial, or communal facilities
15 to serve and improve the residential area in which an authority-
16 financed multifamily housing project is located or is planned to be
17 located, thereby enhancing the viability of such housing.

18 (2) To qualify as rehabilitation under this section, the
19 rehabilitation expenditures with respect to the project must equal
20 or exceed 30% of the portion of the cost of acquiring the building
21 and equipment financed with the proceeds of the notes or bonds
22 issued to acquire and rehabilitate the project. For a project
23 located in an eligible distressed area, the amount of
24 rehabilitation may be less than the 30% requirement if the
25 authority determines ~~and expresses~~ by resolution that the likely
26 benefit to the community or the proposed residents of the project
27 merits the use of this financing source. This subsection does not

1 apply to a project for which the authority has authorized a loan
2 commitment under this section before December 18, 1985. The
3 authority shall not provide long-term financing for a project under
4 this section unless the project is constructed or rehabilitated in
5 anticipation of authority financing, the construction or
6 rehabilitation is undertaken with authority financing, long-term
7 financing is being provided with respect to a housing project for
8 which regulatory or contractual restrictions assuring occupancy of
9 some or all of the units by families or persons of low or moderate
10 income are subject to termination within a 2-year period following
11 the acquisition of the housing project, or a housing project which
12 is to be owned and operated by a nonprofit housing corporation
13 which is qualified under section 501(c)(3) of the internal revenue
14 code, 26 USC 501(c)(3).

15 (3) Notwithstanding the provisions of this section, the
16 authority shall establish by resolution higher income limits for a
17 housing project financed under either subsection (1)(a) or (b)
18 ~~equal to the income limits of subsection (1)(c)~~ if the authority
19 determines all of the following:

20 (a) The owner of the housing project exercised reasonable
21 efforts to rent the dwelling units to persons and families whose
22 incomes did not exceed the originally applicable income
23 limitations.

24 (b) For any annual period after the first tenant has occupied
25 the housing project, the owner of the housing project has been
26 unable to attain and sustain at least a 95% occupancy level at the
27 housing project.

1 (4) Notwithstanding the expiration of lending authority under
2 this section, multifamily housing projects financed under this
3 section may continue to remain eligible for occupancy by persons
4 and families whose incomes do not exceed the limits provided in
5 subsection (1) or (3).

6 (5) A borrower seeking to qualify for a loan under this
7 section shall file an application with the authority which includes
8 the following:

9 (a) A description of the proposed credit enhancement. The
10 proposed credit enhancement may be in the form of a letter of
11 credit, bonding, guarantee, mortgage insurance, or other
12 appropriate security in an amount sufficient to assure the
13 authority that repayment of notes or bonds issued by the authority
14 is reasonably secure.

15 (b) An undertaking to pay all costs of issuing the notes or
16 bonds and to provide compensation for, as considered appropriate by
17 the borrower and at no cost to the authority, any underwriters,
18 trustees, counsel, and other professionals as are necessary to
19 complete the financing.

20 (c) An application fee equal to the greater of \$4,000.00 or
21 0.0005 multiplied by the principal amount of notes or bonds for
22 which issuance is requested. For a project located in an eligible
23 distressed area, the fee required by this subdivision ~~shall be~~ **IS**
24 refundable if the notes or bonds are not delivered or may be waived
25 by the authority ~~in the event~~ **IF** the owner of the housing project
26 is or will be a nonprofit housing corporation qualified under
27 section 501(c)(3) of the internal revenue code, 26 USC 501(c)(3),

1 or a limited dividend housing association wholly owned and
2 controlled by 1 or more nonprofit corporations qualified under
3 section 501(c)(3) of the internal revenue code, 26 USC 501(c)(3).
4 In all other cases, the fee is nonrefundable.

5 (6) So long as there is uncommitted bonding capability under
6 the limitations of section 32, the authority shall issue a 6-month
7 commitment to loan funds, subject to sale by the authority of its
8 notes and bonds in compliance with applicable law and pursuant to
9 terms and conditions which permit the funding of such loan, either
10 directly or indirectly by a loan through a mortgage lender, to the
11 borrower in the amount of the total development cost of the
12 proposed multifamily housing project or \$25,000,000.00, whichever
13 is less, or if the proposed multifamily housing project is located
14 in an eligible distressed area, in the amount of the total
15 development cost of the proposed project or \$50,000,000.00,
16 whichever is less, upon the determination by the authority of all
17 of the following:

18 (a) The housing project is eligible for financing under this
19 section.

20 (b) The borrower is an eligible borrower under this act.

21 (c) The requirements of subsection (5) have been met.

22 (d) The borrower has provided evidence of a commitment to
23 issue a credit enhancement in the form of a letter of credit,
24 bonding, guarantee, mortgage insurance, or other appropriate
25 security in a form and amount sufficient to assure the authority
26 that the repayment of notes or bonds issued by the authority for
27 purposes of making a loan to the borrower is reasonably secure. If

1 the authority determines that repayment of the notes or bonds will
2 be reasonably secure, the authority's review of the credit
3 enhancement shall take the place of the authority's normal
4 underwriting and feasibility review.

5 (e) If the loan is made indirectly by a loan through a
6 mortgage lender, the requirements of section 44b have been met.

7 (7) Unless a borrower is either a nonprofit housing
8 corporation qualified under section 501(c)(3) of the internal
9 revenue code, 26 USC 501(c)(3), or a limited dividend housing
10 association that is wholly owned and controlled by 1 or more
11 nonprofit corporations qualified under section 501(c)(3) of the
12 internal revenue code, 26 USC 501(c)(3), and may borrow money from
13 the authority without an allocation of the state volume limitation,
14 a borrower and any person who is a related person to the borrower
15 as defined in section 144(a)(3) of the internal revenue code, 26
16 USC 144(a)(3), shall not have outstanding loan commitments under
17 this section which total more than the greater of \$25,000,000.00 or
18 the amount of financing approved for a single project under
19 subsection (6). Once a loan has been made under this section, the
20 commitment made with respect to the loan shall no longer be
21 considered to be outstanding.

22 (8) Simultaneously with the issuance of the loan commitment by
23 the authority, the borrower shall pay a commitment fee established
24 by the authority in the amount of not more than 0.1% of the
25 principal amount of notes or bonds to be issued. The authority
26 shall credit the amount paid by the borrower as an application fee
27 under subsection (5) against this commitment fee. The authority

1 shall extend a 6-month loan commitment issued under subsection (6)
2 for an additional 6 months upon payment by the borrower of a
3 nonrefundable extension fee of \$5,000.00, which fee shall not be
4 credited against any other fee or payment to the authority.

5 (9) Within the period during which the commitment is
6 effective, the authority, upon a determination that the terms and
7 conditions of the commitment have been satisfied, shall make its
8 loan directly, or indirectly through a loan to a mortgage lender,
9 to the borrower.

10 (10) Except as otherwise provided in this subsection, upon
11 issuance of any notes or bonds to finance a housing project under
12 this section, the borrower shall pay ~~at the time~~ **WHEN** the notes or
13 bonds are issued, in addition to any commitment or extension fee
14 paid under subsection (8), a fee established by the authority of
15 either not more than 0.9% of the principal amount of the notes or
16 bonds for a loan made for a project located in an eligible
17 distressed area or not more than 1.9% of the principal amount of
18 the notes or bonds for a loan made for a project located in other
19 than an eligible distressed area. If notes or bonds have been
20 issued under this section for a project owned by the borrower
21 located in an eligible distressed area within 180 days before the
22 issuance of notes or bonds for the next project financed by that
23 borrower, which next project is located in other than an eligible
24 distressed area, the fee under this subsection shall be not more
25 than 0.9% of the principal amount of the notes or bonds. If notes
26 or bonds have been issued under this section for a project located
27 in other than an eligible distressed area and the borrower has paid

1 the 1.9% fee, the authority shall not charge a fee under this
2 subsection for the next project financed by that borrower if that
3 next project is located in an eligible distressed area and if the
4 notes or bonds are issued within 180 days after the notes or bonds
5 were issued for the project located in other than an eligible
6 distressed area. In addition to the fee to be paid to the authority
7 ~~at the time~~ **WHEN** notes or bonds are issued under this section, the
8 authority may, at its sole discretion, establish an annual fee, or
9 other administrative fees, to be paid by the borrower during the
10 term of the loan. All or any portion of the fees due to the
11 authority under this subsection shall be paid by the borrower to
12 the authority in annual or semiannual installments, as the
13 authority shall determine, after the date on which notes or bonds
14 are issued to finance the related housing project.

15 (11) Subject to any rights of the holders of any notes or
16 bonds issued to finance a multifamily housing project under this
17 section, if the owner of a multifamily housing project financed
18 under this section provides evidence satisfactory to the authority
19 that ~~the~~ **A PROSPECTIVE** new owner of the multifamily housing project
20 is an eligible borrower under this act and the exemption from
21 federal income taxation of interest on the notes or bonds issued to
22 finance the multifamily housing project will not be impaired as a
23 result of a sale, refinancing, or resyndication, the borrower may
24 sell, refinance from a source other than the authority, or
25 resyndicate that housing project at any time. ~~There shall not be a~~
26 **A** prepayment penalty or fee **SHALL NOT BE** required for the sale,
27 refinancing, or resyndication ~~in addition to~~ **OTHER THAN** any

1 prepayment penalty or fee owing to the holders of notes or bonds
2 issued to finance a housing project under this section, except that
3 the owner shall pay all fees of the authority described in
4 subsection (10) before or concurrent with the sale, refinancing, or
5 resyndication. For student housing, a transfer of ownership shall
6 be approved by a resolution of the college or university board of
7 trustees for the college or university that approved the initial
8 financing under this section.

9 (12) A borrower is allowed distributions equal to a 12% return
10 on the borrower's investment in a multifamily housing project
11 financed under this section for the first 12 months of operation of
12 the housing project following substantial completion. The allowable
13 return shall be increased by 1% for each 12-month period after the
14 first 12 months. The maximum allowable return for a housing project
15 located in other than an eligible distressed area is 25%. Any
16 return less than the allowable rate in any preceding period may be
17 received in any subsequent period on a cumulative basis.

18 (13) Before September 1 of each year, ~~after 1984,~~ the owner of
19 a housing project financed under this section shall report to the
20 authority all of the following, which the authority shall include
21 in the report required by section 32(14):

22 (a) The incomes of the tenants residing in that housing
23 project in a manner that preserves the anonymity of those tenants.

24 (b) The estimated economic and social benefits of that housing
25 project to the immediate neighborhoods in which it has been
26 constructed.

27 (c) The estimated economic and social benefits of that housing

1 project to the city in which it has been constructed.

2 (d) Information requested by the authority about that housing
3 project that is needed so that the authority can report the extent
4 of displacement, direct and indirect, of lower income persons
5 caused by housing projects financed under this section, the steps
6 taken by governmental and private parties to ameliorate the
7 displacement, and the results of those efforts.

8 (e) Information requested by the authority about that housing
9 project that is needed so that the authority can report the
10 estimated extent of additional reinvestment activities by private
11 lenders attributable to the authority's financing of housing
12 projects financed under this section.

13 (f) Except for housing for students, the age, race, family
14 size, and average income of the tenants of these housing projects.

15 (g) The estimated economic impact of these housing projects,
16 including the number of construction jobs created, wages paid, and
17 taxes and payments in lieu of taxes paid.

18 (14) Mortgages securing loans made under this section are
19 authority-aided mortgages.

20 (15) The authority may inspect and audit projects and records
21 of projects financed under this section in order to monitor
22 compliance with the requirements of this section. If there is
23 noncompliance, the authority, pursuant to the provisions of the
24 financing and organizational documents applicable to the
25 transaction, may pursue the remedies that the authority considers
26 appropriate. Except as is required to ~~assure~~ **ENSURE** compliance with
27 this section or section 46 or otherwise required by purchasers of,

1 or a third party credit enhancement provider with respect to, notes
2 or bonds issued to finance a multifamily housing project under this
3 section, the authority shall not regulate, in any manner, a
4 multifamily housing project financed under this section. This
5 section does not preclude the authority from regulating a
6 multifamily housing project in consideration for other types of
7 program benefits, incentives, or concessions provided by the
8 authority ~~over and above~~ **IN ADDITION TO** the financing made
9 available under this section.

10 (16) Notwithstanding any other provision of this section,
11 there shall not be any liability on the part of the authority or
12 its members, officers, employees, or agents, and the assets of the
13 authority shall not be subject to any liability, as a result of any
14 act or failure to act under this section on the part of the
15 authority or its members, officers, employees, or agents.

16 (17) If notes or bonds have been issued under this section for
17 a project located in an eligible distressed area within 180 days
18 before the submission, by the same borrower or a borrower having
19 the same general partners, of a commitment for credit enhancement,
20 that borrower's application shall be given priority over the other
21 applications submitted under this section to finance projects
22 located in other than eligible distressed areas, except for
23 projects for which the authority has authorized loan commitments.
24 The principal amount of notes or bonds issued to finance a project
25 given priority under this subsection shall not exceed 10 times the
26 principal amount of the notes or bonds issued to finance the
27 distressed area project that qualifies the borrower for priority

1 consideration.

2 (18) Except for housing projects for which the authority has
3 adopted an inducement resolution on or before April 1, 1991, loans
4 shall not be made under this section unless the authority
5 determines that use of the state's unified volume cap for a project
6 will not impair the ability of the authority to carry out programs
7 or finance housing developments or housing units which are targeted
8 to lower income persons.

9 (19) Beginning ~~on the effective date of the amendatory act~~
10 ~~that added this subsection~~ **JANUARY 3, 2005**, a person or entity who
11 proposes a student housing project shall cooperate with the college
12 or university from which the majority of tenants are proposed to be
13 drawn by using its best efforts to communicate with the college or
14 university regarding the location of and the need for the project.
15 If, in the judgment of the authority, the person or entity
16 proposing the project does not communicate with the college or
17 university and the unit of local government where the project is
18 located regarding the location of and need for the project, the
19 authority may deny financing for the project. The authority shall
20 not make a financing commitment for a housing project unless the
21 board of trustees of the college or university from which a
22 majority of students are anticipated to be residents of the housing
23 project adopts a resolution in support of the proposed development.