

Legislative Analysis



EXPAND MSHDA PASS-THROUGH BOND PROGRAM

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Senate Bill 417 as reported from House committee

Sponsor: Sen. Sam Singh

House Committee: Economic Development and Small Business

Senate Committee: Housing and Human Services

Complete to 3-12-24

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 71 of 2024)

SUMMARY:

Senate Bill 417 would amend the State Housing and Development Authority Act to make several modifications to the Michigan State Housing Development Authority (MSHDA) Pass-Through Bond Program, including authorizing MSHDA to use the proceeds of the bonds to finance certain senior housing projects, accept private placements as a form of credit enhancement, and allow eligible borrowers to have up to \$100.0 million in outstanding loan commitments.

The Pass-Through Bond Program allows MSHDA to issue bonds to finance a project undertaken by an eligible housing developer. The bonds are a limited obligation of MSHDA, not secured by MSHDA's capital reserve account, and not backed by the moral obligation of the state. To protect MSHDA from risk, the bonds are secured by the revenues of the borrower, the real and personal property being financed, and an acceptable form of credit enhancement.¹

Eligible projects

Under the State Housing and Development Authority Act, MSHDA can use the proceeds of the bonds to make loans to eligible entities (such as a nonprofit housing corporation, limited dividend housing association, mobile home park corporation, or public body or agency) for the construction, rehabilitation, or long-term financing of multi-family housing projects for students or for which at least 20% of the units are allocated for low- and moderate-income persons. The loans can also be used for social, recreational, commercial, or communal facilities to serve and improve the residential area in which a project is or will be located.²

Under SB 417, multi-family housing projects that include independent living, congregate care, and assisted living units for individuals who are at least 55 years old would be eligible for the program. The bill would also no longer require the pass-through program to provide *long-term* financing for eligible projects.

Eligible expenditures

The bill would remove a provision that prohibits MSHDA from providing long-term financing for a project unless the project is constructed or rehabilitated in anticipation of the financing, any requirements that some or all of the units are occupied by low- or moderate-income

¹ For more information on the program, see: <https://www.michigan.gov/mshda/developers/pass-through> and https://www.michigan.gov/mshda/-/media/Project/Websites/mshda/developers/lihtc/assets/liptbruslr/mshda_li_ptb_01_pass_through_bond_prog_stmt_app_req.pdf?rev=7bfd2bb1761d4ade8da2f139c3475c61&hash=1BCFAF0484D1E715F9104165FF35AD05.

² Under Senate Bill 417, supporting facilities would also qualify as an eligible use.

individuals will expire within two years, or the project is to be owned and operated by a qualified 501(c)(3) nonprofit housing corporation.

To be eligible for financing through the Pass-Through Bond Program, rehabilitation expenditures with respect to a project currently must equal at least 30% of the portion of the cost of acquiring the building and equipment that is financed with the proceeds of the bonds issued for the project, unless the project is located in an eligible distressed area³ and receives approval from MSHDA. Under SB 417, the required proportion of rehabilitation expenditures would be reduced to at least 15% of the proceeds of the related notes or bonds, regardless of whether the project is in an eligible distressed area.

MSHDA would no longer be required, but would still be able, to issue higher income limits for a project financed by the Pass-Through Bond Program if it determines that the owner of the project exercised reasonable efforts to rent the units to persons whose incomes did not exceed the original income limitations and cannot attain and sustain at least a 95% occupancy level for the project for any one-year period after the first tenant.

Application

A borrower seeking to qualify for a loan must file an application with MSHDA that includes an acceptable proposed credit enhancement. Under SB 417, a standby purchase agreement⁴ would be an acceptable credit enhancement, and an applicant could alternatively include a description of a private placement structure⁵ that provides for the sale and resale of the notes or bonds consistent with MSHDA's restrictions and limitations. If MSHDA determines that the repayment of the notes or bonds will be reasonably secure because of the proposed credit enhancement or private placement structure, that determination would be conclusive and would take the place of MSHDA's normal underwriting and feasibility review.

The bill would also reduce the application fee from the greater of \$4,000 or 0.05% of the principal amount of notes or bonds requested to 0.01% of the principal amount of requested notes or bonds.

Commitments

MSHDA must issue a six-month commitment to loan funds for a project in an amount that cannot be greater than the total development cost of the project or \$25.0 million (or \$50.0 million for a project in an eligible distressed area), whichever is less, after determining that the following conditions are met:

- The project is eligible for financing and the borrower is an eligible borrower.
- A completed application has been submitted and the borrower has provided acceptable evidence of a commitment to issue the proposed credit enhancement to assure MSHDA that the repayment of the notes or bonds is reasonably secure.⁶

³ For a description and list of eligible distressed areas, see: <https://www.michigan.gov/mshda/-/media/Project/Websites/mshda/about/reports/MSHDA-EDA-List.pdf>. Generally, the term means local governments experiencing levels of economic hardship above the state average.

⁴ A standby purchase agreement is used to guarantee repurchase of the bonds. See: <https://www.nabl.org/bond-basics/standby-bond-purchase-agreement/>.

⁵ Under a private placement structure, an institutional investor purchases the bonds privately.

⁶ Under Senate Bill 417, the borrower could fulfill this requirement by providing acceptable evidence of a commitment to privately purchase the notes or bonds.

- If the loan is made indirectly through a mortgage lender, all applicable requirements have been met.

Under SB 417, MSHDA would no longer be required, but would still be able, to issue a six-month commitment to loan funds under those conditions, and the cap on the commitment amount would be removed. The bill also would no longer require MSHDA to extend a six-month loan commitment for an additional six months if the borrower pays a nonrefundable \$5,000 fee.

Currently, a borrower and any related person⁷ generally cannot have outstanding loan commitments totaling more than the amount of financing approved for a single project or \$25.0 million, whichever is greater, at any one time.⁸ Senate Bill 417 would increase this maximum to the greater of \$100.0 million or the amount of financing approved for a project.

Fees

A borrower generally must pay a fee of up to 1.9% of the principal amount of the notes or bonds for a loan made for a project, or up to 0.9% of the principal amount if the project is located in an eligible distressed area. This fee is in addition to any commitment or extension fee, and MSHDA can establish an annual fee or other administrative fees to be paid by the borrower during the term of the loan. Senate Bill 417 would cap the fee at 1.9%, regardless of where the project is located, and an additional annual or administrative fee would be due during the term of the loan *or* the applicable compliance monitoring period.

Subject to any rights of the holders of any notes or bonds issued to finance a multi-family housing project, if the owner of a project provides MSHDA with satisfactory evidence that a prospective new owner is an eligible borrower and interest on the notes or bonds will remain exempt from federal income taxes, the borrower can sell, refinance from an alternate source, or resyndicate the project without being required to pay a prepayment penalty or fee, other than a penalty or fee owed to the holders of the notes or bonds issued to finance the project. Senate Bill 417 would specify that a penalty or fee could also be owed to a mortgage lender or credit enhancer.

MCL 125.1444c

BRIEF DISCUSSION:

According to committee testimony, the bill would allow more housing development projects to be completed and would better align Michigan with current practices, particularly because most states currently allow certain investors to use a private placement structure. Reducing the proportion of expenditures that must be spent on rehabilitation to qualify for the Pass-Through Bond Program to 15% would also align state law more closely with federal requirements.⁹

⁷ See: <https://www.law.cornell.edu/uscode/text/26/144>.

⁸ This provision does not apply to 501(c)(3) housing corporations and limited dividend housing associations owned and controlled by those corporations.

⁹ See: <https://www.irs.gov/tax-exempt-bonds/rehabilitation-requirement-under-irc-section-147d-for-financing-acquisitions-of-existing-property>.

FISCAL IMPACT:

The bill would have no direct fiscal impact on state or local government. However, the bill would expand the scope of MSHDA's use of certain bond and note proceeds, as noted above. MSHDA is a component unit of the state of Michigan authorized to issue notes and bonds to finance housing for rental or sale to low- and moderate-income families and individuals. As such, MSHDA's notes and bonds are a direct obligation of the authority and are not a debt of the state of Michigan. MSHDA is authorized by statute to have \$5.0 billion of notes and bonds outstanding.

The change in the application fee from the greater of \$4,000 or 0.0005 multiplied by the principal amount of notes or bonds issued to 0.0001 multiplied by the principal amount would reduce application fee revenues on a per dollar basis. Changes to other fees would have an indeterminate impact and would depend on the project being financed with notes or bonds.

POSITIONS:

Representatives of the following entities testified in support of the bill (2-13-24):

- Michigan State Housing Development Authority
- Ginosko Development

The following entities indicated support for the bill (3-5-24):

- Michigan Housing Council
- Michigan Realtors
- Olympia Development

Legislative Analyst: Holly Kuhn
Fiscal Analyst: Ben Gielczyk

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