

Act No. 345
Public Acts of 2012
Approved by the Governor
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STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Reps. Shaughnessy, Zorn and Wayne Schmidt

ENROLLED HOUSE BILL No. 5618

AN ACT to amend 1966 PA 346, entitled "An act to create a state housing development authority; to define the powers and duties of the authority; to establish a housing development revolving fund; to establish a land acquisition and development fund; to establish a rehabilitation fund; to establish a conversion condominium fund; to create certain other funds and provide for the expenditure of certain funds; to authorize the making and purchase of loans, deferred payment loans, and grants to qualified developers, sponsors, individuals, mortgage lenders, and municipalities; to establish and provide acceleration and foreclosure procedures; to provide tax exemption; to authorize payments instead of taxes by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations; and to prescribe criminal penalties for violations of this act," by amending section 44c (MCL 125.1444c), as amended by 2004 PA 535.

The People of the State of Michigan enact:

Sec. 44c. (1) If the resolution authorizing the issuance of notes or bonds provides that the notes or bonds are limited and not general obligations of the authority, are not secured by the capital reserve capital account, and are secured solely by revenues and property derived from or obtained in connection with the housing project, the authority shall use the proceeds of those notes or bonds to make loans directly, or indirectly by a loan through a mortgage lender, to a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, limited dividend housing association, mobile home park corporation, mobile home park association, or public body or agency for the construction, rehabilitation, long-term financing or any combination of construction, rehabilitation, or long-term financing of any of the following:

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

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

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

(2) To qualify as rehabilitation under this section, the rehabilitation expenditures with respect to the project must equal or exceed 30% of the portion of the cost of acquiring the building and equipment financed with the proceeds of the notes or bonds issued to acquire and rehabilitate the project. For a project located in an eligible distressed area, the amount of rehabilitation may be less than the 30% requirement if the authority determines by resolution that the likely benefit to the community or the proposed residents of the project merits the use of this financing source. This subsection does not apply to a project for which the authority has authorized a loan commitment under this section before December 18, 1985. The authority shall not provide long-term financing for a project under this section unless the

project is constructed or rehabilitated in anticipation of authority financing, the construction or rehabilitation is undertaken with authority financing, long-term financing is being provided with respect to a housing project for which regulatory or contractual restrictions assuring occupancy of some or all of the units by families or persons of low or moderate income are subject to termination within a 2-year period following the acquisition of the housing project, or a housing project which is to be owned and operated by a nonprofit housing corporation which is qualified under section 501(c)(3) of the internal revenue code, 26 USC 501(c)(3).

(3) Notwithstanding the provisions of this section, the authority shall establish by resolution higher income limits for a housing project financed under either subsection (1)(a) or (b) if the authority determines all of the following:

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

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

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

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

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

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

(c) An application fee equal to the greater of \$4,000.00 or 0.0005 multiplied by the principal amount of notes or bonds for which issuance is requested. For a project located in an eligible distressed area, the fee required by this subdivision is refundable if the notes or bonds are not delivered or may be waived by the authority if the owner of the housing project is or will be a nonprofit housing corporation qualified under section 501(c)(3) of the internal revenue code, 26 USC 501(c)(3), or a limited dividend housing association wholly owned and controlled by 1 or more nonprofit corporations qualified under section 501(c)(3) of the internal revenue code, 26 USC 501(c)(3). In all other cases, the fee is nonrefundable.

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

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

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

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

(d) The borrower has provided evidence of a commitment to issue a credit enhancement in the form of a letter of credit, bonding, guarantee, mortgage insurance, or other appropriate security in a form and amount sufficient to assure the authority that the repayment of notes or bonds issued by the authority for purposes of making a loan to the borrower is reasonably secure. If the authority determines that repayment of the notes or bonds will be reasonably secure, the authority's review of the credit enhancement shall take the place of the authority's normal underwriting and feasibility review.

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

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

(8) Simultaneously with the issuance of the loan commitment by the authority, the borrower shall pay a commitment fee established by the authority in the amount of not more than 0.1% of the principal amount of notes or bonds to be issued. The authority shall credit the amount paid by the borrower as an application fee under subsection (5) against this commitment fee. The authority shall extend a 6-month loan commitment issued under subsection (6) for an additional 6 months upon payment by the borrower of a nonrefundable extension fee of \$5,000.00, which fee shall not be credited against any other fee or payment to the authority.

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

(10) Except as otherwise provided in this subsection, upon issuance of any notes or bonds to finance a housing project under this section, the borrower shall pay when the notes or bonds are issued, in addition to any commitment or extension fee paid under subsection (8), a fee established by the authority of either not more than 0.9% of the principal amount of the notes or bonds for a loan made for a project located in an eligible distressed area or not more than 1.9% of the principal amount of the notes or bonds for a loan made for a project located in other than an eligible distressed area. If notes or bonds have been issued under this section for a project owned by the borrower located in an eligible distressed area within 180 days before the issuance of notes or bonds for the next project financed by that borrower, which next project is located in other than an eligible distressed area, the fee under this subsection shall be not more than 0.9% of the principal amount of the notes or bonds. If notes or bonds have been issued under this section for a project located in other than an eligible distressed area and the borrower has paid the 1.9% fee, the authority shall not charge a fee under this subsection for the next project financed by that borrower if that next project is located in an eligible distressed area and if the notes or bonds are issued within 180 days after the notes or bonds were issued for the project located in other than an eligible distressed area. In addition to the fee to be paid to the authority when notes or bonds are issued under this section, the authority may, at its sole discretion, establish an annual fee, or other administrative fees, to be paid by the borrower during the term of the loan. All or any portion of the fees due to the authority under this subsection shall be paid by the borrower to the authority in annual or semiannual installments, as the authority shall determine, after the date on which notes or bonds are issued to finance the related housing project.

(11) Subject to any rights of the holders of any notes or bonds issued to finance a multifamily housing project under this section, if the owner of a multifamily housing project financed under this section provides evidence satisfactory to the authority that a prospective new owner of the multifamily housing project is an eligible borrower under this act and the exemption from federal income taxation of interest on the notes or bonds issued to finance the multifamily housing project will not be impaired as a result of a sale, refinancing, or resyndication, the borrower may sell, refinance from a source other than the authority, or resyndicate that housing project at any time. A prepayment penalty or fee shall not be required for the sale, refinancing, or resyndication other than any prepayment penalty or fee owing to the holders of notes or bonds issued to finance a housing project under this section, except that the owner shall pay all fees of the authority described in subsection (10) before or concurrent with the sale, refinancing, or resyndication. For student housing, a transfer of ownership shall be approved by a resolution of the college or university board of trustees for the college or university that approved the initial financing under this section.

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

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

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

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

(c) The estimated economic and social benefits of that housing project to the city in which it has been constructed.

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

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

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

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

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

(15) The authority may inspect and audit projects and records of projects financed under this section in order to monitor compliance with the requirements of this section. If there is noncompliance, the authority, pursuant to the provisions of the financing and organizational documents applicable to the transaction, may pursue the remedies that the authority considers appropriate. Except as is required to ensure compliance with this section or section 46 or otherwise required by purchasers of, or a third party credit enhancement provider with respect to, notes or bonds issued to finance a multifamily housing project under this section, the authority shall not regulate, in any manner, a multifamily housing project financed under this section. This section does not preclude the authority from regulating a multifamily housing project in consideration for other types of program benefits, incentives, or concessions provided by the authority in addition to the financing made available under this section.

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

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

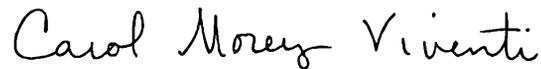
(18) Except for housing projects for which the authority has adopted an inducement resolution on or before April 1, 1991, loans shall not be made under this section unless the authority determines that use of the state's unified volume cap for a project will not impair the ability of the authority to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

(19) Beginning January 3, 2005, a person or entity who proposes a student housing project shall cooperate with the college or university from which the majority of tenants are proposed to be drawn by using its best efforts to communicate with the college or university regarding the location of and the need for the project. If, in the judgment of the authority, the person or entity proposing the project does not communicate with the college or university and the unit of local government where the project is located regarding the location of and need for the project, the authority may deny financing for the project. The authority shall not make a financing commitment for a housing project unless the board of trustees of the college or university from which a majority of students are anticipated to be residents of the housing project adopts a resolution in support of the proposed development.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor