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TO: Detroit City Council

FROM: David Whitaker, Director 
Legislative Policy Division

DATE: May 19, 2023

RE: Request for Opinion on Senate Bills

The Legislative Policy Division (LPD) has been requested by Council Member Gabriela Santiago-Romero to provide a report regarding several recently approved Michigan Senate Bills. The bills in question are as follows:

- SB 362: Attainable Housing Facilities Act
- SB 364: Neighborhood Enterprise Zone Expansion
- SB 422: Residential Facilities Exemption Act
- SB 432: PILOTS for Housing
- SB7 (S-1): Infrastructure spending bill with capital allocations for development. For example:
 - ARP- Missing Middle Gap Program - \$50,000,000 (one-time)
 - ARP- Community revitalization and placemaking grants program - \$100,000,000 (one-time)
 - ARP- Housing gap financing and affordable housing - \$150,000,000 (one-time)

LPD has reviewed the referenced Senate Bills and provides this report:

Attainable Housing Facilities Act

Senate Bill 362 was approved by the Legislature and codified under Public Act 236 of 2022 Attainable Housing Facilities Act. Pursuant to the Act, a local governmental unit may establish an “attainable housing district”¹. This newly created tax incentive is designed to provide a catalyst for the development of attainable housing “qualified facilities”² for “income qualified households”³. If an attainable housing district is established under the Act, the owners of properties within that district may apply for an attainable housing facility certificate which will exempt the owner of the facility from paying the ad valorem taxes due on the facility for the duration of the certificate.

Properties that are eligible to be considered under the Act as attainable housing property is defined under MCL 207.902:

(e) "Attainable housing property" means that portion of real property not occupied by an owner of that real property of not more than 4 units that is classified as residential real property under section 34c of the general property tax act, 1893 PA 206, MCL 211.34c, used for residential purposes, that is rented or leased to an income-qualified household at no more than 30% of the household's modified household income as determined by the qualified local governmental unit. Attainable housing property also includes a building or group of contiguous buildings previously used for industrial or commercial purposes that will be converted to a multiple-unit dwelling or a dwelling unit in a multiple-purpose structure, used for residential purposes consisting of not more than 4 units, that will be rented or leased to an income-qualified household at no more than 30% of the household's modified household income as determined by the qualified local governmental unit. Attainable housing property does not include any of the following:

- (i) Land.
- (ii) Property of a public utility.

The establishment of an attainable housing district is set forth in MCL 207.903 which provides in pertinent part:

Sec. 3.

- (1) A qualified local governmental unit, by resolution of its legislative body, may establish 1 or more attainable housing districts within the qualified local governmental unit.
- (2) The legislative body of a qualified local governmental unit may establish an attainable housing district on its own initiative or upon a written request filed by the owner or owners of property comprising at least 50% of all taxable value of the property located within a proposed district. The written request must be filed with the clerk of the qualified local governmental unit.
- (4) The legislative body of the qualified local governmental unit, in its resolution establishing a district, shall set forth a finding and determination that there is a need for attainable housing within

¹MCL 207.902(b) "Attainable housing district" or "district" means an area in a qualified local governmental unit established as provided in section 3 in which attainable housing property is or will be located.

² MCL 207.902(k) "Qualified facility" means a new facility or a rehabilitated facility, located in an attainable housing district.

³ MCL 207.902(d) "Income-qualified household" means an individual, couple, family, or group of unrelated individuals whose adjusted household income is 120% or less of the countywide area median income as posted annually by the Michigan state housing development authority on its website.

the district and shall provide a copy of the resolution by certified mail to the county in which the district is located.

After the establishment of an attainable housing district, the local governmental unit may approve a request for an exemption certificate for a qualified facility (not the land on which the qualified facility is located). If the certificate is approved, the qualified facility is exempt from ad valorem property taxes collected under the general property tax act for the period the certificate is effective. The qualified facility certificate can only be approved for a facility that will house an income qualified household.

A qualified facility exemption certificate can be granted by the legislative body for a period of 1 to 12 years. If the number of years determined is less than 7, the certificate may be subject to review by the legislative body of the qualified local governmental unit and the certificate may be extended. The total amount of time determined for the certificate including any extensions must not exceed 15 years after the completion of the qualified facility.

According to MCL 207.916 no new attainable housing certificates will be granted after December 31, 2027. The existing certificates will be allowed to complete their terms.

LPD is not aware of any attainable housing districts having been established by City Council and no certificates having been approved by the City of Detroit, however the provisions of the Act are available to the City for implementation.

Residential Housing Facilities Act

Senate Bill 422 was approved by the Legislature and codified under the Public Act 237 of 2022 Residential Housing Facilities Act. Pursuant to the Act, a local governmental unit may establish a residential housing district. This newly created tax incentive is designed to provide a catalyst for the development of residential housing for “income qualified residents”⁴. If a residential housing district is established under the Act, the owner/developers of new or rehabilitated residential properties within that district may apply for a residential housing facility certificate which will exempt the owner/developer of the facility from paying the ad valorem taxes due on the facility for the duration of the certificate.

Properties that are eligible to be considered under the Act as “residential housing property” is defined under MCL 207.952

(m) "Residential housing property" means that portion of real property not occupied by an owner of that real property, that is used for residential purposes, is rented or leased to an income-qualified household at no more than 30% of the household's modified household income as determined by the qualified local governmental unit, and is either a multiple-unit dwelling of more than 4 units or a dwelling unit in a multiple-purpose structure of more than 4 dwelling units. Residential housing property does not include any of the following:

- (i) Land.
- (ii) Property of a public utility.

The establishment of the residential housing district is set forth in MCL 207.953 which provides in pertinent part:

⁴ The definition of Income-qualified household is the same under the Residential Housing Act as the Attainable Housing Facilities Act.

Sec. 3.

(1) A qualified local governmental unit, by resolution of its legislative body, may establish 1 or more residential housing districts⁵.

(2) The legislative body of a qualified local governmental unit may establish a residential housing district on its own initiative or upon a written request filed by the owner or owners of property comprising at least 50% of all taxable value of the property located within a proposed district. The written request must be filed with the clerk of the qualified local governmental unit.

(4) The legislative body of the qualified local governmental unit, in its resolution establishing a district, shall set forth a finding and determination that there is a need for residential housing within the district and shall provide a copy of the resolution by certified mail to the county in which the district is located.

After the establishment of a residential housing district, the local governmental unit may approve a request for an exemption certificate for a qualified residential facility⁶ (not the land on which the qualified facility is located). If the certificate is approved, the qualified residential facility is exempt from ad valorem property taxes collected under the general property tax act for the period the certificate is effective. The qualified residential facility certificate can only be approved for a facility that will house an "income qualified household".⁷

A qualified residential facility exemption certificate can be granted by the legislative body for a period of 1 to 12 years. If the number of years determined is less than 12, the certificate may be subject to review by the legislative body of the qualified local governmental unit and the certificate may be extended. The total amount of time determined for the certificate including any extensions shall not exceed 12 years after the completion of the qualified residential facility.

According to MCL 207.966 no new residential housing certificates will be granted after December 31, 2027. The existing certificates will be allowed to complete their terms.

LPD is not aware of any residential housing districts having been established by City Council and no certificates having been approved by the City of Detroit, however the provisions of the Act are available to the City for implementation.

Amendment to Neighborhood Enterprise Zone

Senate Bill 364 was approved by the Legislature amending the Neighborhood Enterprise Zone Act MCL 207.773 by adding Subsection (7) which provides in pertinent part:

Beginning June 1, 2023, in addition to all other requirements under this act, both of the following apply in a city, township, or village that became a local governmental unit pursuant to the amendatory act that added this subsection:

⁵ MCL 207.952(j) "Residential housing district" or "district" means an area not less than 1 acre in size of a qualified local governmental unit established as provided in section 3.

⁶ MCL 207.902(k) "Qualified residential facility" means a new facility or a rehabilitated facility, located in an attainable housing district.

⁷ MCL 207.902(d) "Income-qualified household" means an individual, couple, family, or group of unrelated individuals whose adjusted household income is 120% or less of the countywide area median income as posted annually by the Michigan state housing development authority on its website.

- (a) A local governmental unit may designate a neighborhood enterprise zone only if the local governmental unit determines that both of the following are met:
 - (i) The designation encourages compact development and the neighborhood enterprise zone contains 5 or more existing residential units per acre at the time of designation.
 - (ii) The neighborhood enterprise zone is adjacent to existing development, can utilize existing infrastructure, and has access to municipal water and sewer services on at least 1 frontage.
- (b) Notwithstanding section 9, for that part of a facility that in the prior year was occupied by an individual, couple, family, or group of unrelated individuals with a combined adjusted household income in excess of 120% of the countywide area median income as posted by the Michigan state housing development authority on its website, the specific tax paid in lieu of taxes for the year must be equal to the full amount of the taxes that would be paid on that portion of the facility if the facility were not tax exempt.

Although the amendment to the Act was approved in December 2022 its effective date begins June 1, 2023. After the effective date, both subsection (7)(a) and (7)(b) must be undertaken for any designated neighborhood enterprise zone. This change in the law will require any future neighborhood enterprise zone approvals to contain 5 or more existing residential units per acre; be adjacent to existing development as well as utilize existing infrastructure and has access to municipal water and sewer services.

It further provides, that if in the prior year, a portion of the facility was occupied by an individual, couple, family, or group of unrelated individuals with a combined adjusted household income in excess of 120% of the countywide area median income, the specific tax paid in lieu of taxes for the year must be equal to the full amount of the taxes that would be paid on that portion of the facility if the facility were not tax exempt. This provision coincides with the income qualified household language of the new Attainable Housing Facility Act and the Residential Housing Act cited above.

LPD notes the provisions of this amendment at the time of this writing were not effective and therefore have not been implemented by the City. However, after June 1, 2023, the City should implement this provision.

Legislative Appropriations

The referenced Senate Bill 7 appropriations were approved by the legislature. The legislative appropriations where applicable to the City of Detroit if received may be implemented for the purpose designated. LPD is not aware of whether the City has sought or received any of the referenced appropriated funding. City Council may wish to inquire of the Administration whether any department has made a request or received any appropriated funds. The provisions requested for review are as follows:

Blight Elimination

Sec. 301. (1) From the funds appropriated in part 1 for ARP – blight elimination program, \$75,000,000.00 shall be used to address eligible properties in this state. The state land bank authority shall establish grant and distribution criteria that are consistent with the requirements in this section and shall administer the program. Grants issued under the program may be used for the following activities for eligible properties:

(a) Demolition of vacant residential, commercial, or industrial structures, including reasonable and necessary costs directly related to demolition, including, but not limited to, title work, due care demolition plans, acquisition, utility disconnect fees, permit fees, abatement of hazardous materials, air monitoring at demolition sites, the replacement of damaged sidewalk or recurbing at the street, and seeding.

(b) Stabilization of vacant residential, commercial, or industrial structures identified for future rehabilitation. Eligible stabilization costs may include acquisition, debris removal, exterior security materials to deter trespassing and vandalism, and interior and exterior repairs needed to protect against further deterioration and meet local exterior property maintenance requirements.

The administration of the \$75 million funds of the blight elimination program will be conducted by the State Land Bank Authority. The legislation provides that each of the 10 largest land banks or state land bank municipal partnerships will receive a grant of \$2,500,000.00 to be used on the activities described in subsection (1). The legislation further provides that \$30,500,000.00 must be used for a competitive grant program to address eligible properties in this state for the purposes described in subsection (1). In areas served by a county or city land bank, the land bank shall act as the lead applicant for grants within its jurisdiction⁸. In areas not served by a county or city land bank, a county, city, village, or township may apply for a grant directly.

Missing Middle Gap Program

Sec. 302. (1) From the funds appropriated in part 1 for ARP – missing middle gap program⁹, \$50,000,000.00 must be used by the Michigan state housing development authority to create a missing middle housing program to increase the supply of housing stock, in response to the negative economic impacts of the pandemic, for employees by providing cost defrayment to developers investing in, constructing, or substantially rehabilitating properties that are targeted to missing middle households.

In accordance with the legislation, the missing middle gap program is to be administered through the Michigan State Housing Development Authority and not more than 15% of the dollar amount of awards under this section must be allocated to projects in any single city, village, or township.

Community Revitalization and Placemaking Grant Program

Sec. 306. (1) From the funds appropriated in part 1 for community revitalization and placemaking grants program, \$100,000,000.00 shall be used by the Michigan strategic fund to create and operate the community revitalization and placemaking grants program to invest in projects that enable population and tax revenue growth through rehabilitation of vacant and blighted buildings and historic structures, rehabilitation and development of vacant properties, and development of permanent place-based infrastructure associated with social zones and traditional downtowns, outdoor dining, and place-based public spaces. If grant funds are used to support residential

⁸ LPD notes that if the City of Detroit (City) continues the agreement with the Michigan Land Bank Authority regarding the Detroit Land Bank Authority (DLBA), the DLBA will be the lead applicant for the grants on behalf of the City.

⁹ (j) “Missing middle household” or “missing middle households” means a household or households as defined by the authority. The authority’s definition must be supported by housing data and comply with rules and regulations established by the American rescue plan act of 2021, Public Law 117-2, specifically all regulations and requirements around the use of the coronavirus state fiscal recovery fund.

projects, those projects must comply with other program guidelines and eligibility as determined by the Michigan strategic fund.

The funds relative to the community revitalization and placemaking grants program are to be disbursed by the Michigan Strategic Fund Authority after consultation and collaboration with the local units of government and local economic development agencies to implement community revitalization and placemaking grants program.

Housing Gap Financing and Affordable Housing

The Housing gap financing and affordable housing appropriation of \$150,000,000 was approved in a separate legislative act under House Bill 4016 which became effective March 8, 2023. The pertinent provision of HB 4016 is as follows:

Sec. 709. (1) From the funds appropriated in part 1 for housing gap financing and affordable housing, the Michigan state housing development authority shall create a program to assist in the implementation of Michigan's statewide housing plan by reducing housing cost burdens on Michigan residents and increasing the supply and preserving the existing supply of affordable housing.

Pursuant to the legislation, the funds appropriated for housing gap financing and affordable housing shall be allocated to help defray the costs of projects, sponsored by for-profit and nonprofit developers, which emphasize the creation of affordable housing supply in this state, as determined by the authority.

Amendment to State Housing Authority Act PILOT for Housing

Senate Bill 432 was approved by the Legislature amending the State Housing Authority Act, Section MCL 125.415(a). The Act provides a list of enumerated housing projects that are exempt from all ad valorem property taxes imposed by the State or by any political subdivision, public body, or taxing district in which the project is located. The amendment to Section 15(a) added to the exemption a housing project that is being developed for "workforce housing"¹⁰ that is in a municipality and is subject to a municipal ordinance that is adopted by the governing body of that municipality to approve a housing project for tax exemption.

Section 15(a)(1)(b) provides:

A housing project that is being developed or rehabilitated for workforce housing that is located in a municipality and is subject to a municipal ordinance that is adopted by the governing body of that municipality to approve a housing project for tax exemption under this subdivision. The approval or denial of a tax exemption under this subdivision must be in accordance with an ordinance or resolution concerning the selection of workforce housing projects that is adopted by the governing body.

Under this new provision, the City after approving an ordinance allowing for tax exempted workforce housing, can grant the tax exemption to an owner of a new or rehabilitation workforce housing project that meet the requirements provided by law.

¹⁰ MCL 125.1415(a)(10)(d) "Workforce housing" means rental units or other housing options that are reasonably affordable to, and occupied by, a household whose total household income is not greater than 120% of the area median income and published by the United States Department of Housing and Urban Development.

The amendment also makes changes to the service charges for municipal services an owner of an exempted property pays in lieu of taxes to a municipality. The Senate Fiscal Agency succinctly summarized the changes made under the amendment.

All the following apply to the amount that an owner must pay as a service charge:

- -- Subject to the provisions below and for a new construction project, the owner must pay an annual service charge equal to an amount that is the greater of the tax on the property on which the project is located for the tax year preceding the date on which construction is commenced or 10% of the annual shelter rents obtained from the project.
- -- Subject to the provisions below and for a rehabilitation project, an amount that is lesser of the tax on the property on which the project is located for the tax year preceding the date on which rehabilitation is commenced or 10% of the annual shelter rents obtained from the project.
- -- Subject to the provisions below, a municipality may establish or change by ordinance and by any amount it chooses, the service charge paid in lieu of taxes by all or any class of housing projects exempt from taxation under the Act; however, the service charge may not exceed the amount in taxes that an owner would have otherwise paid if the housing project were not tax exempt.
- -- Notwithstanding the service charges prescribed above, a service charge paid in lieu of taxes for the part of a housing project that is exempt and occupied by individuals or families other than low-income individuals or families must be equal to the full amount of the taxes that would be paid on that portion of the housing project if the housing project were not tax exempt.
- -- Notwithstanding the service charges prescribed above, a service charge paid each year in lieu of taxes for that part of a housing project that is tax exempt and not used for workforce housing must be equal to the full amount of the taxes that would be paid on that portion of the housing project if the housing project were not tax exempt.
- -- The annual service charge prescribed above must be increased by the additional amount if, within 45 days after the treasurer of the county's receipt of the certified notification of the exemption, the county board of commissioners for that county passes a resolution by majority vote that provides that the additional amount must be paid and that the approval of the resolution is in accordance with an ordinance or resolution adopted by the county board of commissioners concerning the factors to be considered.

The pertinent provisions regarding the payment in lieu of taxes appear to be those relative to service charges paid regarding low-income individuals or families and the workforce housing projects. Where the service charge paid in lieu of taxes for the part of a housing project that is exempt and occupied by individuals or families other than low-income individuals or families, the amount paid must be equal to the full amount of the taxes that would be paid if the property was not exempt. The same regarding service charge paid each year in lieu of taxes for that part of a housing project that is tax exempt and not used for workforce housing, again the amount paid must be equal to the full amount of the taxes that would be paid if the property was not exempt.

If we can be of further assistance, please call upon us.