

# Legislative Analysis



## COMMERCIAL RENTAL PROPERTY SPECIFIC TAX

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bills 5096 and 5097

Sponsor: Rep. Fulton Sheen

Committee: Tax Policy

Complete to 8-24-05

## A SUMMARY OF HOUSE BILLS 5096 AND 5097 AS INTRODUCED 8-17-05

Together, the bills would put in place a new method of taxing commercial rental property by exempting such property from the general ad valorem property taxes under the General Property Tax Act and levying a new specific tax on that property instead.

House Bill 5096 would create a new act, the Commercial Rental Property Specific Tax Act to impose the new specific tax on commercial rental property. House Bill 5097 would amend the General Property Tax Act to exempt commercial rental property beginning December 31, 2005. The bills are tie-barred to each other.

In general, the bills do not appear to treat commercial rental property differently from current law. However, the bills do appear to address the Michigan Supreme Court's 2002 decision in *WPW Acquisition v. City of Troy*, in which the court said that an increase in value in a property's occupancy rate could not increase the property's taxable value beyond the constitutional assessment cap. The decision said the General Property Tax Act's treatment of an increase in occupancy rate as an "addition" is unconstitutional. That finding was based on the occupancy rate provisions having been added to the act's definition of "additions" and "losses" after the passage of Proposal A, which amended the state constitution, in part, to limit increases in property tax assessments.

House Bill 5096 would address that issue by specifying (as the General Property Tax Act currently does) that an increase in occupancy rate would only be counted as an addition if either a loss based on a decrease in occupancy rate was previously allowed or if the value of new construction had previously been reduced because of a below market occupancy rate.

### House Bill 5096 (Specific Tax)

Under House Bill 5096, local assessors each year would be required to determine the value, taxable value, and adjusted taxable value of a parcel of commercial rental property by December 31. The adjusted taxable value would be the property's taxable value (as determined under the General Property Tax Act), and adjustments for any additions or losses attributable to an increase or decrease in the property's occupancy rate. (The value of the additions and losses would be calculated in the same manner as provided currently under the General Property Tax Act.) Similar to the General Property Tax Act, an addition for increased occupancy would only be added if either a loss because of a

decrease in occupancy rate was previously allowed or if the value of new construction was reduced because of a below market occupancy rate.

The tax rate would be the number of mills assessed in the local tax collecting unit as if that property were subject to the General Property Tax Act, and the base would be the adjusted taxable value. The tax would be payable in the same manner as taxes collected under the General Property Tax Act. Commercial rental property located in a renaissance zone would be exempt from the specific tax, as provided under the Michigan Renaissance Zone Act, except for special assessments, debts millages, school enhancement millages, and school building sinking fund millages.

With certain exceptions, tax revenue would be disbursed by the tax collecting unit to other taxing units in the same manner as provided under the General Property Tax Act.

### **FISCAL IMPACT:**

A fiscal analysis is in progress.

### **BACKGROUND INFORMATION:**

Under the state constitution, as amended by Proposal A in 1994, year to year increases in the taxable value of a parcel of property are generally limited to five percent or the rate of inflation, whichever is lower; however, the value of the property may be adjusted for certain additions and losses, irrespective of the assessment cap. Under the General Property Tax Act, "losses" include, among other things, an adjustment in value because of a decrease in a property's occupancy rate. Similarly, the act provides that "additions" include an increase in the value attributable to an increase in a property's occupancy rate if either a loss because of a decrease in occupancy rate was previously allowed or if the value of new construction had been reduced because of a below market occupancy rate.

In *WPW Acquisition v. City of Troy*, the state supreme court held that the additional value attributable to an increase in a property's occupancy rate was not consistent with Proposal A and, therefore, unconstitutional. At the time Proposal A was approved by the voters, the terms "additions" and "losses," as defined in the General Property Tax Act, did not encompass any increase or decrease in value because of a change in a property's occupancy rate. The current definitions of "additions" and "losses", as applied to tax years after 1994, were added to the General Property Tax Act with the enactment of Public Act 415 of 1994, after approval of Proposal A. The court noted that if the legislature were free to classify increases in value as "additions", it could undermine one of the intended purposes of Proposal A – to limit property taxes. As a result of the court's opinion, under current law, a property's taxable value can be reduced because of a decrease in occupancy rate, but does not increase when the occupancy rate subsequently increases.

Legislative Analyst: Mark Wolf  
Fiscal Analyst: Jim Stansell

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