

COMMERCIAL RENTAL PROPERTY SPECIFIC TAX

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

House Bills 5096 and 5097 (Substitutes H-2)

Sponsor: Rep. Fulton Sheen

Committee: Tax Policy

Complete to 8-31-05

A SUMMARY OF HOUSE BILLS 5096 AND 5097 (H-2) AS REPORTED FROM COMMITTEE

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, and House Bills 4980, 5095, 5098, and 5106-5108.

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 in the provision struck down by the courts) that an increase in occupancy rate could 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 and adjusted taxable value of a parcel of commercial rental property by December 31. Property would be assessed at 50 percent of its true cash value. In general, the adjusted taxable value of the property would be the lesser of the following:

- Current state equalized value (SEV)

- Adjusted taxable value in the previous years (adjusted for any losses and any occupancy loss) multiplied by five percent or the rate of inflation, and adjusted for additions and an occupancy addition.

For 2006, the property's taxable value would be its adjusted taxable value in 2005. 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. Upon a transfer of ownership, the property's adjusted taxable value would "pop up" to the state equalized value, and would then be subject to the assessment cap. Assessments could be appealed in the same manner as provided under the General Property Tax Act.

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.

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. Unpaid taxes would be subject to foreclosure, forfeiture, and sale in the same manner as provided under the General Property Tax Act.

House Bill 5097 (Property Tax Exemption)

The bill would exempt commercial rental property from the General Property Tax Act. Property owners would have to file an affidavit with the local tax collecting unit before December 31 with the local tax collecting unit. Property owners would also be required to file a form rescinding the exemption within 90 days of when that property is no longer considered to be commercial rental property. Failure to file a rescission would be a penalty of \$5 per day, up to \$200, for each day after the 90-day period. The penalty would be deposited in the School Aid Fund.

Assessors could deny an exemption claim for the current year and the preceding three years. If an exemption is denied, the tax roll would be amended to reflect the denial and a corrected tax bill would be issued. Taxes levied would be delinquent on March 1 of the year immediately after the year in which the corrected tax bill is issued. If the property is transferred to a "bona fide purchaser" before a corrected bill is issued, the tax would not be lien against the property and billed to the purchaser, but would be assessed against the previous owner who claimed the exemption.

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

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