Legislative Analysis

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TAXATION OF COMMERCIAL RENTAL PROPERTY

Senate Bill 114 (without amendment)
Sponsor: Sen. Vincent Gregory
Senate Committee: Finance
Committee: Tax Policy

Complete to 2-18-14

A SUMMARY OF SENATE BILL 114 AS PASSED BY THE SENATE 6-13-13

Senate Bill 114 would amend the General Property Tax Act to eliminate the use of occupancy additions and occupancy losses in determining a property's taxable value.

Under the State Constitution, as amended by Proposal A of 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 property may be adjusted for certain additions and losses, without regard to the assessment cap. Under the General Property Tax Act, the term "losses" includes, among other things, an adjustment in value because of a decrease in a property's occupancy rate. Similarly, the term "additions" includes an increase in the value attributable to an increase in a property's occupancy rate, if a loss had previously been allowed because of a decrease in occupancy rate or if the value of new construction had been reduced because of a below-market occupancy rate.

In 2002, the state Supreme Court struck down the use of occupancy ***additions***, meaning that while a property's taxable value can be reduced because of a reduction in occupancy rate, it cannot increase when the occupancy rate subsequently increases.

Senate Bill 114 would limit the use of occupancy additions to the period prior to December 31, 2001, and limit the use of occupancy losses to the period prior to December 31, 2013. This means, going forward, after 2013, neither occupancy additions nor occupancy losses would be used in determining a property's taxable value.

MCL 211.34d

FISCAL IMPACT:

As written, the bill would have an indeterminate but positive impact on state and local revenues. All occupancy rate "loss" adjustments to the value of commercial property represent a loss of tax revenue. These adjustments would not occur under the proposed legislation, therefore there will be an increase in revenues relative to current law. The size of the revenue increase cannot be estimated, since this would require taxpayer specific data that is not available.

BACKGROUND INFORMATION:

Senate Bill 114 addresses an issue stemming from the Michigan Supreme Court's 2002 decision in *WPW Acquisition v. City of Troy* concerning the role of "occupancy additions" in determining the taxable value of commercial rental property. Generally speaking, as a result of the court decision, under current law the taxable value of commercial rental property ***can be reduced*** because of a decrease in occupancy rate but ***cannot increase*** when the occupancy rate subsequently increases.

In *WPW Acquisition v. City of Troy* (466 Mich 117), the Michigan 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 was unconstitutional. At the time Proposal A was approved by voters, the terms "additions" and "losses," as defined in the General Property Tax Act, did not encompass any increase or decrease in value attributable to a change in occupancy rate. The current definitions, as applied to tax years after 1994, were added to the General Property Tax Act with the enactment of Public Act 415 of 1994, one of the acts implementing Proposal A. The court noted that if the Legislature was free to classify increases in value as "additions," it would undermine one of the intended purposes of Proposal A—to limit property taxes.

However, because the court did not address the issue of whether a decrease in occupancy rate could be treated as a "loss," the result of the decision is that, under current law, as noted earlier, a property's taxable value can be reduced because of a decrease in occupancy rate, but cannot increase when the occupancy rate subsequently increases.

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