Legislative Analysis

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TAXATION OF COMMERCIAL RENTAL PROPERTY

House Bill 5621
Sponsor: Rep. Jud Gilbert, II
Committee: Tax Policy

Complete to 5-15-12

A SUMMARY OF HOUSE BILL 5621 AS INTRODUCED 5-10-12

House Bill 5621 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 the property's occupancy rate if a loss was previously 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 could be reduced because of a reduction in occupancy rate, it would not increase when the occupancy rate subsequently increased.

The bill limits the use of occupancy additions to the period prior to December 31, 2001, and limits the use of occupancy losses to the period prior to December 31, 2012. This means, going forward, after 2012, neither occupancy additions nor occupancy losses would be used in determining a property's taxable value.

MCL 211.34d

FISCAL IMPACT:

A fiscal impact cannot be determined.

BACKGROUND INFORMATION:

House Bill 5621 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 were 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, a property's taxable value can be reduced because of a decrease in occupancy rate, but cannot increase when the occupancy rate subsequently increases.

(A similar bill, House Bill 4602, was reported from committee on 9-14-11 and is on third reading in the House.)

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