

RESIDENTIAL DEVELOPMENT PROPERTY

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

House Bill 5538 (Substitute H-2)
Sponsor: Rep. Joe Hune
Committee: Tax Policy
Revised First Analysis (5-18-04)

BRIEF SUMMARY: The bill would exempt residential development property from the 18-mills local school operating tax and would exempt new construction on residential development property from all taxes collected under the General Property Tax Act.

FISCAL IMPACT: House Bill 5538 would reduce property tax revenues by an indeterminate amount. Because the amount of residential development property that would potentially qualify for the 18 mill exemption is not known, it is not possible to determine the exact fiscal impact. However, for each \$1 million of taxable value of residential development property that does qualify, property tax revenues would decrease by \$18,000.

The 18 mills that are currently levied is dedicated to the local school district's operating expenses. Thus, the full impact of the exemption would be to reduce local school operating expenses. Because the School Aid Fund (SAF) makes up the difference between the \$6,700 per student foundation allowance and the amount of revenue that a school district receives from the 18 mill levy, HB5538 could constrain the ability of the SAF to meet the \$6,700 per student target.

The provisions in the substitute to exempt newly constructed houses from all property taxes until sold and to exempt all contiguous property from the 18-mill school operating tax could both increase the bill's fiscal impact significantly.

THE APPARENT PROBLEM:

Proposal A essentially divides property into two major classifications for the purposes of taxation: homestead and non-homestead property. [Homesteads are basically owner-occupied principal residences and are now known as "principal residences".] Currently, principal residences are exempted from the 18 school operating mills levied by local school districts under the Revised School Code. Non-principal residences, which include rental housing, second homes, and business property, are not exempt from the school operating millage.

Currently, residential development property is subject to the 18 school operating mills. (These, essentially, are homes in the process of being built or built but never yet occupied.) Homebuilders say this additional tax is burdensome, as the tax continues to accrue while the home sits on the market. Legislation has been introduced to exempt residential development property from local school operating mills.

THE CONTENT OF THE BILL:

The bill would amend the General Property Tax Act to exempt residential development property from the 18-mill local school operating taxes in the same manner that principal residences - formerly known as homesteads - are exempt from the same taxes. This would apply to taxes levied after December 31, 2004.

In order to claim the exemption, the owner of the property would have to file an affidavit with the local tax collecting unit by May 1. If the local assessor determines that the property qualifies for the exemption, the exemption continues to December 31 of the year in which the property is no longer residential development property (generally, when the property is sold to a homebuyer). The owner of the property would have to file a rescission form rescinding the exemption within 90 days after the property is no longer considered to be residential real property. An owner who fails to file the rescission form after 90 days would be subject to a fine of \$5 per day, with a maximum of \$200, though the fine could be waived by the Department of Treasury. Fine revenue would be deposited into the School Aid Fund (SAF).

The owner of residential development property who does not file an affidavit by the May 1 deadline or who has been denied an exemption could file an appeal with the local July or December Board of Review.

If the local assessor believes that an exemption should have been granted, he or she could deny or modify an existing exemption by notifying the property owner in writing at least 10 days prior to the meeting of the board of review. The owner could appeal to the Board of Review and, if necessary, to the Michigan Tax Tribunal.

If an exemption is “erroneously” granted, the property owner could request the assessor to withdraw the exemption, the property would immediately be placed back onto the tax roll as if the exemption had not been granted, and a corrected tax bill would be issued. An owner who requests the withdrawal of an exemption and pays the corrected tax bill within 30 days would not be subject to any interest and penalties on the additional tax. An owner who pays a corrected tax bill more than 30 days after receiving the bill would be liable for interest and penalties that would have accrued if the exemption had not been granted.

The bill would define “residential development property” to mean real property that meets the following criteria:

- Is classified as residential real property;
- Is subject to one of the following conditions or is contiguous to and associated with property that meets one of the following conditions:
 - has, after the bill’s effective date, a final plat for the property recorded pursuant to the Land Division Act;

- has a condominium subdivision plan completed and a master deed for all or a portion of the property recorded pursuant to the Condominium Act;
 - the real property is included in a planned unit development approved under the County Zoning Act, Township Zoning Act, or the City and Village Zoning Act.
 - the real property is included in a development under an open space preservation provision or similar zoning ordinance under the County Zoning Act, Township Zoning Act, or the City and Village Zoning Act.
- does not have located on it, a residential dwelling or condominium unit that is occupied or that has ever been occupied.

Residential property could include property with a partially completed residential dwelling, a partially completed condominium unit, or a fully completed residential dwelling or condominium unit that has never been occupied. The term would not include a residential dwelling or condominium unit used for commercial purposes or as an office, showroom, or model.

In addition, for taxes levied after December 31, 2004, the bill would exempt all new construction on residential development property from all taxes collected under the act.

MCL 211.7ii and 211.7jj

ARGUMENTS:

For:

The additional tax placed on homebuilders by the local school operating mills can be quite burdensome to many homebuilders as they wait for their property to be sold. Given the current state of the economy, the time it takes to sell a home has greatly increased compared to the “boom” years of the late 1990’s. That being the case, when a home sits on the market for an extended period of time, the homebuilder is responsible for a large amount of taxes. Moreover, the homebuilder has a limited ability to pass those costs onto the home buyer, as the selling price of the home generally must reflect the home’s appraised value. As a result, the homebuilder typically must absorb the additional property taxes on the property, which in some cases can be quite significant. As an example, one homebuilder from Livingston County testified that she has had a property accrue more than \$18,000 in taxes in the 18 months the property has been on the market. This is a particularly stiff burden for many small businesses in the state, and actually serves as a disincentive to many homebuilders to assume the risk of building homes (which creates jobs) during uncertain economic times.

Against:

The bill is yet another bill that slowly erodes the taxing authority of local governmental units. While the estimated costs are difficult to quantify, it is certain that the bill will negatively impact local schools. Schools have struggled mightily during the current, and protracted, downturn in the state’s economy and have resorted to teacher layoffs and deep

programmatic cuts in an attempt to balance their budgets. It's ironic that this bill is being considered at a time when the House is also considering legislation to provide taxpayers with a tax credit as a means to encourage them to contribute to local educational foundations. Exempting residential development property from local school operating taxes further exacerbates the financial problems plaguing many school districts in the state.

Response:

The bill has the potential to benefit schools. By exempting residential development property, the bill encourages the construction of new homes, which has the potential to bring additional students (and dollars) to school districts in the state.

Against:

The bill, like numerous other exemptions, creates some inequities within the tax code. In particular, the bill places vacant existing residential property at a comparative disadvantage, as those properties would be subject to local school operating taxes. In addition, this comparative advantage for residential development property further perpetuates urban sprawl in the state.

Against:

The substitute bill adds a provision not contained in the introduced version that would exempt all new construction on residential development property from taxes collected under the General Property Tax Act. The potential resulting revenue loss to local governmental units is, quite frankly, huge. Under the provisions of the bill, residential development properties would be exempt from local school operating taxes while the home is being constructed. Once the home is built, and prior to being sold and occupied, the house itself would not be subject to any property taxes, including the six-mill state education tax. While the bill, as introduced, was ostensibly intended to provide homebuilders with some tax relief, this added provision eliminates nearly all taxes on residential developments. With continued cuts in state revenue sharing and continued erosions of local taxing authority through numerous tax exemptions and credits, local governments are particularly hard-pressed at finding alternative sources of revenue. This bill will only add to their financial troubles.

POSITIONS:

The Michigan Association of Home Builders supports the bill. (5-12-04)

The Michigan Association of Realtors supports the bill (5-12-04)

Palo Homes of Brighton supports the bill. (5-12-04)

Boyd Buchanan Builders of Pinkney supports the bill. (5-12-04)

Fielier Builders LLC of South Lyon supports the bill. (5-12-04)

Sober Construction of Fowlerville supports the bill. (5-12-04)

Komar Construction Company LLC of Brighton supports the bill. (5-12-04)

The Department of Treasury opposes the bill. (5-12-04)

The Michigan Small and Rural Schools Association opposes the bill. (5-12-04)

Oakland Schools opposes the bill. (5-12-04)

The Michigan Townships Association opposes the bill. (5-12-04)

The Michigan Association of Counties opposes the bill. (5-13-04)

The Michigan Municipal League opposes the concept of the bill. (5-14-04)

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.