



**House
Legislative
Analysis
Section**

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UTILITY TAX: TAXABLE VALUE

House Bills 5218 as enrolled
Public Act 257 of 1995
Second Analysis (2-2-96)

Sponsor: Rep. Willis Bullard, Jr.
House Committee: Tax Policy
Senate Committee: Finance

THE APPARENT PROBLEM:

The term "taxable value" has been added to the General Property Tax Act to implement the constitutional limit on how much property assessments can increase from one year to the next. That limit was added to the state constitution by the passage of Proposal A on March 15, 1994. It says the assessment of a parcel of property cannot increase from one year to the next by more than five percent or the percentage increase in the consumer price index, whichever is less. As a result, property taxes are now based on the "taxable value" of property, which will be lower than state equalized value (SEV) where property values are increasing at a rate higher than the limit. However, there are a number of tax statutes that provide for an alternative tax to be levied in lieu of property taxes. Usually the statutes provide abatements for certain categories of property, and the "specific" taxes that must be paid are calculated using the same elements (property value and millage rates) used in calculating property taxes. These statutes need to be amended if the various taxes are to be calculated based on the "taxable value" of property rather than SEV. Several bills addressing the subject have already passed the House. Another tax levied in lieu of general property taxes is the so-called state utility tax, which applies to the property of telephone companies and railroads, among others (although not electric and gas utilities). That tax, which is administered at the state level rather than by local units, and which dates from 1905, is levied at a rate equal to the average statewide ad valorem rate levied on other commercial, industrial, and utility property.

THE CONTENT OF THE BILL:

House Bill 5218 would amend Public Act 282 of 1905, which provides for the taxation of certain utility property, such as telephone companies and railroads, so that the state board of assessors would determine annually the "taxable value" of the property subject to

the tax (along with "true cash value"). The bill also would specify that all property of a company subject to taxation under the act would be considered one parcel in determining the taxable value of the company's property.

The bill also would state that "This amendatory act is intended to clarify that the taxable basis of property subject to tax under this act, including intangible property, is also subject to the limitations on taxable value provided in Section 3, Article IX, of the Michigan Constitution of 1963. This act is not intended to exempt any particular type of property."

MCL 207.4 et al.

FISCAL IMPLICATIONS:

The bill is expected to have little or no fiscal impact because railroad and utility property generally depreciates in value, according to an analysis provided to the House Tax Policy Committee by the Republican Programs and Research Section. (11-1-95)

ARGUMENTS:

For:

The bill would simply apply the assessment cap approved by voters with the passage of Proposal A to property on which the state utility tax (instead of standard local property taxes) is levied. That act mainly affects telephone companies and railroads. Many people assumed that the assessment cap, which limits how fast the assessment of property can increase from one year to the next, applied to all property. It was simply an oversight, they say, that this and other statutes were not changed as part of the Proposal A implementation package. The bill would tax property

House Bill 5218 (2-2-96)

under the state utility tax based on "taxable value", consistent with property taxed under the General Property Tax Act. Similar bills dealing with various other taxes that are levied in lieu of property taxes have already passed the House.

Response:

There is some question as to whether the assessment cap should apply to this property. A recent attorney general's opinion has said, "the cap on assessments [in the state constitution] only applies to the general ad valorem property taxes imposed by . . . the General Property Tax Act." This sentence appears in an opinion specifically related to a question about the applicability of the assessment cap to the state utility tax that applies to telephone companies and railroads, among others. The thrust of that decision was that the special utility tax is referred to in Article IX, Section 5 of the state constitution while the assessment cap language is in Article IX, Section 3, which deals with general ad valorem taxes. The bill under discussion could be subject to challenge based on that opinion. It should also be noted that the state utility tax is imposed not only on real property and tangible personal property but also on intangible personal property, making this tax different from others levied in lieu of property taxes.

Reply:

The section of the constitution providing for the state utility tax (Article IX, Section 5) says that the property in question "shall be assessed at the same proportion of its true cash value as the legislature shall specify for property subject to general ad valorem taxation." Some would argue that this supports applying the assessment cap to this special tax just as it has been applied to general property taxes.

■ 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.