

# Legislative Analysis



## PROHIBIT DARK STORE THEORY

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<http://www.house.mi.gov/hfa>

**House Bill 5865 as introduced**  
**Sponsor: Rep. Jenn Hill**

Analysis available at  
<http://www.legislature.mi.gov>

**House Bill 5866 as introduced**  
**Sponsor: Rep. Julie Brixie**

**House Bill 5867 as introduced**  
**Sponsor: Rep. Mai Xiong**

**House Bill 5868 as introduced**  
**Sponsor: Rep. Gregory Markkanen**

**Committee: Tax Policy**  
**Revised 12-14-24**

## SUMMARY:

House Bills 5865 to 5868 would amend the Tax Tribunal Act and General Property Tax Act to specify procedures for certain disputes before the Michigan Tax Tribunal and make other related changes.

**House Bill 5866** would amend the Tax Tribunal Act to specify criteria that must be applied to a dispute before the entire tribunal (as defined by House Bill 5868) regarding the true cash value of real or personal property.

Under the bill, the tribunal would have to make an independent determination of, and separately state its findings of fact and conclusions of law as to all of the following, in the following order:

- The market the property competes in, the supply and demand for the property, the demand for potential uses of the property, and the economic viability of the property at the specific location within the market it competes in.
- The reasonably probable use the property subject to assessment can be put to in the immediate future and the present use of the property that results in the highest and best use, subject to all of the following:
  - The uses that are physically possible.
  - The uses that are legally permissible under applicable land use legislation, regulations, easements, ordinances, or other encumbrances existing on the tax day. (Note: The tribunal's failure to clearly explain the full effect of any *private restrictions or covenants*<sup>1</sup> on the subject property in its findings of fact and conclusions of law would constitute a reversible error on appeal.)
  - The uses that are financially feasible. A use would financially feasible if it would produce income from or value to the property after considering all risks and costs necessary to create and maintain the use. In determining financial feasibility, the tribunal would have to determine the value of the land in the market area, the value of all improvements to the land, the cost to convert or renovate the land, and existing improvements to support the use.

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<sup>1</sup> *Private restrictions or covenants* would mean a requirement, provision, or statement in a deed, lease, or contract that restrains or limits the use of the property or requires a use of the property.

- The maximally productive use that is physically possible, legally permissible, and financially feasible and that results in the highest value that can be appropriately supported.
- The calculation of a replacement or reproduction construction cost for property that has the same highest and best use and the same utility, features, and age as the property subject to assessment.
- The comparable properties in the market the property subject to assessment competes in that have the same highest and best use as the property subject to assessment. In determining comparable properties, the tribunal would have to do all of the following:
  - Determine that the information for each property considered to be comparable has been verified and accurately and completely discloses every private restriction or covenant on the use of the property, the impact of each private restriction or covenant, the terms of the sale, the method of financing, and market information.
  - Include only property considered to be comparable with a use that is the same as the highest and best use of the property subject to assessment in accordance with the criteria described above.
  - Include property considered to be comparable only if the sale or rental of the property occurred under economic conditions that were not substantially different from the highest and best use of the property subject to assessment, unless there is *substantial evidence*<sup>2</sup> that the economic conditions are common at the location of the property subject to assessment.
  - Include property considered to be comparable that was vacant at the time of sale only if there is substantial evidence to support all of the following:
    - The cause of the vacancy is typical for marketing properties of the same class or there is substantial evidence to support a method of adjusting the value of the vacant comparable property, to support the extent of the adjustment, and to support a conclusion that the final adjusted value for the vacant property is not speculative.
    - The time period of the vacancy is within the marketing exposure time period typical for properties of the same class or there is substantial evidence to support a method of adjusting the value of the vacant comparable property, to support the extent of the adjustment, and to support a conclusion that the final adjusted value for the vacant property is not speculative.
    - The vacancy does not reflect a use different from the highest and best use of the property subject to assessment.
    - The vacancy is not the result of economic or market conditions that are different from the property subject to assessment or there is substantial evidence to support a method of adjusting the value of the vacant comparable property, to support the extent of the adjustment, and to support a conclusion that the final adjusted value for the vacant property is not speculative.
  - Exclude property considered to be comparable that was made subject to a private restriction or covenant in connection with the sale or rental of the

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<sup>2</sup> *Substantial evidence* would mean evidence sufficient to meet the constitutional standard of evidence for an administrative hearing described in section 28 of Article VI of the state constitution of 1963. See <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-ARTICLE-VI-28>.

property if that private restriction or covenant causes the comparable property to have a substantially impaired highest and best use as compared to the property subject to assessment or if that private restriction or covenant does not assist in the economic development of the property, does not provide a continuing benefit to the property, or materially increases the likelihood of vacancy or inactivity on the property.

- The basis for all of the following:
  - Selecting the most relevant units and basis for comparison consistent with the treatment in the market of comparable property.
  - Adjusting the comparable properties for differences in location, age, size, physical condition and characteristics, function, rental terms, financing and other income use, economic characteristics, legal characteristics, and other components that influence the value.
  - Excluding any property pursuant to the criteria described above.
- The method of valuation, subject to all of the following:
  - In determining the method of valuation, the tribunal would have to use, weigh, and reconcile all of the following:
    - The method of valuation used by the assessor.
    - All of the following methods of valuation:
      - Comparable sales.
      - Capitalization of income.
      - Cost less depreciation.
  - In using, weighing, and reconciling the methods of valuation, the tribunal would have to state whether the information supporting each method of valuation is accurate and reliable and, as it considers necessary, require additional information from the parties to determine a value that is credible and not speculative.
- The tribunal could not disregard any method of valuation identified above without a reasonable justification supported by substantial evidence or a stipulation that complies with the requirements of the bill.

The tribunal's determinations would be subject to all of the following:

- The tribunal could consider the parties' stipulation to a finding of fact or conclusion of law described above only if the parties further provide a stipulated explanation of the evidentiary basis for that finding of fact or conclusion of law that comports with the evidentiary basis required for an independent tribunal determination.
- For each finding of fact, the tribunal would have to separately identify supporting evidence that is substantial and reliable and has been verified.
- If the evidence on the record does not constitute substantial evidence, the tribunal would have to require additional evidence from the parties sufficient to support a conclusion that it has reached an independent determination.
- The determinations would have to be made in accordance with generally accepted appraisal principals, including the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Foundation.<sup>3</sup>

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<sup>3</sup>[https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal\\_Standards/Uniform\\_Standards\\_of\\_Professiona%20Appraisal\\_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbf4-41b3-9878-fac35923d2af](https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professiona%20Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbf4-41b3-9878-fac35923d2af)

- The tribunal would have to defer to the assessing agency’s determinations pertaining to true cash value to the extent that the assessing agency followed proper procedures in making those determinations pursuant to section 27 of the General Property Tax Act.<sup>4</sup>

Proposed MCL 205.738

**House Bill 5865** would amend section 27 of the General Property Tax Act to prohibit an assessor from considering a sale or rental of property made subject to a private restriction or covenant that prohibits the use to which the property under assessment is actually employed or, if the property under assessment is not being used, any use for which it is readily adapted as comparable when using the comparable-sales method of assessing the true cash value of real property.

MCL 211.27

**House Bill 5867** would amend the Tax Tribunal Act to provide that, in a dispute subject to House Bill 5866, the petitioner’s burden of proof includes, at a minimum, a burden of pleading applicable to the petitioner’s initially filed petition, which would be subject to dismissal unless it alleges all of the following:

- The petitioner’s best estimate of the true cash value of the subject property.
- The basis for the petitioner’s estimate, including a clear and complete explanation of all of the following:
  - The valuation method that the petitioner alleges is the proper method to use to determine the subject property’s true cash value.
  - The specific differences between the petitioner’s preferred valuation method and the method used by the assessing agency whose valuation the petitioner appeals.
  - All reversible errors committed by the assessing agency whose valuation the petitioner appeals.
  - Any other information that the tribunal may require by rule.

MCL 205.737

**House Bill 5868** would amend the Tax Tribunal Act to newly define the term *entire tribunal* to mean the hearing division of the tribunal other than the residential property and small claims division created in section 61 of the act.<sup>5</sup>

MCL 205.703

House Bills 5866, 5867, and 5868 are tie-barred together, which means that none of them can take effect unless all three of them are enacted.

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<sup>4</sup> <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-211-27>

<sup>5</sup> <https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-205-761>

## **BACKGROUND:**

The bills appear intended to address the use of the “dark store theory” in assessing the taxable value of big box stores (i.e., Walmart, Meijer, Best Buy, etc.). The theory asserts that, since these properties have very limited markets and potential uses when they are sold (and often sell for less than it costs to build them), they should be assessed using the sale value of similar properties rather than other approved assessment methods.<sup>6</sup> This has led to some large retail properties being assessed at values considerably lower than in other states when disputes have come before the Michigan Tax Tribunal.<sup>7</sup>

## **FISCAL IMPACT:**

House Bill 5866 would increase costs for the Michigan Tax Tribunal, housed within the Department of Licensing and Regulatory Affairs (LARA). According to LARA, the bill would require judges and their staff to spend more time preparing for and conducting conferences and hearings, reviewing valuation disclosures, and drafting decisions. The department anticipates the need for an additional 5.0 FTEs with an increase in annual costs of over \$1.0 million to meet the bill’s requirements. The bill would have no fiscal impact on any other units of state or local government.

The bills establish several criteria the Tax Tribunal must consider when evaluating a taxpayer’s appeal of a property assessment, and prescribe the order of priority of the criteria. The expectation appears to be that the Tax Tribunal’s decisions would result in higher taxable values (and therefore higher state and local property tax revenue) than if only one factor is used. Moreover, HB 5865 prohibits an assessor from considering a property subject to a private restriction or covenant that prohibits the use to which the property under assessment is actually employed when using the comparable-sales method of assessing the true cash value.

Although the bills would not necessarily increase taxable values from their existing levels, they could potentially prevent large reductions resulting from appeals in the future. It is not possible to determine a net fiscal impact because of the extent of unknown factors. For example, the number of appeals and their magnitudes cannot be predicted in advance, nor can the manner in which the tax tribunal will interpret provisions of the bill.

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

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<sup>6</sup> <https://www.mlive.com/news/2023/04/the-dark-store-theory-has-cost-michigan-cities-millions-its-facing-new-challenges.html>

<sup>7</sup> <https://mml.org/advocacy/advocacy-dark-stores/>