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VOTE NO ON HB 4456 (H-1)

Building Owners & Managers Association of Metro Detroit

June 8, 2009

The Building Owners and Managers Association of Metropolitan Detroit (BOMA) urges your opposition to HB 4456 (H-1). The bill would impose additional taxes on the commercial real estate business in Michigan. At a time when *commercial real estate is extremely stressed* due to restricted credit markets, unprecedented vacancy rates, and dramatic increases in taxes due to the surcharge of the Michigan Business Tax, now is not the time to throw additional costs and administrative burdens on the industry. Since the 2002 Michigan Supreme Court ruled in favor of WPW Acquisition Company vs. City of Troy, Legislators have introducing bills to "fix" the problem. However, the only real problem is that the fix is usually worse than the issue it purports to be fixing. The opinion was upheld in the Toll v Northville in 2008. When Proposal A was adopted, it placed limits on increases in real property tax with a cap at the rate of inflation or 5%, whichever was less. The Constitution provided that a property's value could be adjusted for additions, without regard to the amendments cap. Subsequently, the Legislature adopted a law expanding the definition of "additions" by including an increase in a property's value due to increased occupancy by tenants, thus allowing property value increases to surpass the cap. WPW argued and the court agreed, the term "additions" was to be interpreted as it was intended when Proposal A passed, thus the cap remains in place.
Several attempts have been made legislatively to redefine the terms "increases" and "losses" for commercial property tax values. However, this bill has some serious flaws that need to be addressed before the bill should move forwards.

BOMA believes the following needs to be addressed:

HB 4456 (H-1) is still Unconstitutional: Supreme Court ruling on WPW and Toll Northville argues that the definitions of gains and losses need to interpreted as they were when Prop A was adopted. Because loss based on occupancy existed prior to Proposal A, any legislative attempt to eliminating gains or losses going forward, as suggested in HB 4456(H-1) is still unconstitutional. Now that WPW and Toll are established law, this legislation would likely be thrown out at a lower court.

- **Does not solve Tax Tribunal backlog**: Most cases before the Tax Tribunal are True Cash Value (TCV), not based on occupancy, but that is also in large part because local units have simply refused to enforce the statute regarding vacancy losses. Assessors intentionally refused to reduce the taxable value to account for losses because there was a question as to whether they could add the occupancy gain. Partly accounting for the growing number of cases before the Tribunal.

- **Estimated Revenue loss is Wrong:** The financial impact of the WPW ruling is overstated because assessors have refused to account for the loss so an increase in occupancy is both inaccurate

and unfair (only a tax increase). The numbers provided in testimony before the House Tax Policy Committee cannot be verified. In order to get the revenue suggested at the committee hearings, all cases before the Tax Tribunal would have to based solely on occupancy, and none of it on TCV. Additionally, taxpayer would have to lose all the cases. Since 2007, the majority of all claims before the Tribunal are TCV due to the declining economy and *not* based on occupancy.

- **Occupancy is still a factor:** VACANCY HAS GREAT RELEVANCE IN THE MARKET VALUES OF PROPERTIES. Tell any broker trying to unload Circuit City stores or any mall that has lost a quarter of their rented space to vacancy (Circuit City, Linens n Things, K-Mart) and they will tell you that the value of the mall as an investment is considerably less. The same companies that have "right-sized" , failed or left our state are increasing vacancies, the full impact has not yet been felt nor reported. Vacancies drive rent concessions and increase operational expenses. HB 4456 will not ease the revenue shortfalls to municipalities. Many have the idea that the recession is an aberration; it is not. It is a market correction. Now is not the time to threaten jobs and force investors out of our state by again raising taxes on the commercial real estate industry in Michigan. **A viable effort for governments to improve the value of these properties and entice back investors is to reduce the expense of ownership -- that includes the reduction of taxes, MBT, SRETT, property taxes.**

If you have any questions or would like additional information about BOMA, or our opposition to HB 4456, please do not hesitate to call us at (248) 848-3714 or email at jlanglois@bomadet.org.

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BOMA represents over 400 member companies and over 250 million square feet of office space in southeast Michigan. BOMA members represent every aspect of our industry from building owners, building mangers, real estate brokers, and various suppliers including landscapers, roofers, janitorial services, utilities, construction firms and architects. We are primarily comprised of business owners who have made the choice to invest in Michigan and create jobs.