

DEPARTMENT OF TAXATION

2003 Fiscal Impact Statement

1. **Patron** Griffith

3. **Committee** Senate Local Government

4. **Title** Local Real Property Tax;
Appeals to Boards of Equalization

2. **Bill Number** HB 2503

House of Origin:

 Introduced

 Substitute

 Engrossed

Second House:

 X **In Committee**

 Substitute

 Enrolled

5. **Summary/Purpose:**

For purposes of real property tax appeals to boards of equalization, this bill would provide a presumption that the assessment is correct and the taxpayer must produce substantial evidence that the assessment is erroneous and was not arrived at in accordance with generally accepted appraisal practice in order to receive relief from the board. Currently, the board of equalization statutes do not prescribe any standard of proof. The bill does not change current law regarding the burden of proof and standard of proof that a taxpayer must produce in circuit court.

This bill would permit taxpayers to make fair market value appeals to a board of equalization. Under current law, boards of equalization are generally focused on determining whether or not the assessment complained of is in line with assessments of similar properties.

This bill would limit to 9 the number of years of consecutive service that a person may sit as a member of a board of equalization and require thirty percent of the members of boards of equalization to have a real estate, legal or financial background with at least 1 such member sitting in all appeals involving business properties, unless waived by the taxpayer. Under current law, the members must only be freeholders. This bill would allow non-freeholding residents to be members of the board of equalization, as long as a majority of the members are freeholders. Additionally, this bill would require each member of a board of equalization to take continuing education instruction at least once in every 4 years of service as a member of such board. No such requirement is currently imposed.

This bill would provide a 3-year statute of limitations for appealing real estate tax assessments to circuit courts. In general, there is a 3-year statute of limitations under current law; however, in some localities there is a 1-year statute of limitations pursuant to specific law.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** None.

8. Fiscal implications:

This bill would have no impact on state revenues. As this bill would require the Department to prepare a report for the General Assembly on the effect of the bill by October 1, 2006, it is estimated that TAX would incur additional costs of \$67,000 in FY 2006 and \$13,000 in FY 2007 to employ and provide an office for one temporary Property Appraisal Consultant for fifteen months to prepare this report.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: None.

11. Other comments:

Real Estate Appeals Process

Under current law, a taxpayer aggrieved by an assessment of real property taxes may apply to the local board of equalization or the circuit court for relief. Typically, an application to the board of equalization is a quick and informal procedure, compared to the formal evidentiary proceedings in the circuit court. Although boards of equalization must be cognizant of the fair market value of the property, they generally focus on determining whether the assessment is in line with assessments of similar properties. The circuit court judge is focused on determining whether the property has been assessed at its fair market value. This bill would expressly authorize taxpayers to make fair market value appeals to boards of equalization.

Evidentiary Standards

Currently, the board of equalization statutes do not prescribe any standard of proof. For purposes of appeals to boards of equalization, this bill would provide a presumption that the assessment is correct and the taxpayer must produce substantial evidence (*i.e.*, more than a scintilla) that the assessment is erroneous and was not arrived at in accordance with generally accepted appraisal practice in order to receive relief from the board. Mistakes of fact, including computation, that affect the assessment would be deemed not to be in accordance with generally accepted appraisal practice. The bill does not change current law regarding the burden of proof and standard of proof that a taxpayer must produce in circuit court (*i.e.* that the taxpayer must show that the assessment resulted from manifest error or disregard of controlling evidence). Additionally, this bill would clarify that the circuit court standard of review is not applicable to board of equalization hearings.

Composition of Board of Equalization

Currently, the only criterion for appointment to the board of equalization is that the person must be a freeholder in the locality. This bill would allow non-freeholding residents to be members of the board of equalization, as long as a majority of the members are freeholders. This bill

would limit to 9 the number of years of consecutive service that a person may sit as a member of a board of equalization. Additionally, this bill would require thirty percent of the members of each board of equalization have a real estate, legal or financial background with at least 1 such member sitting in all appeals involving business properties, unless waived by the taxpayer. Additionally, this bill would require each member of a board of equalization to take continuing education instruction at least once in every 4 years of service as a member of such board. No such requirement is currently imposed.

Statute of Limitations for Circuit Court Appeals

In general, there is a 3-year statute of limitations for appealing real estate tax assessments to the circuit court under current law. However, in some localities there is a 1-year statute of limitations pursuant to specific law. This bill would provide a 3-year statute of limitations for appealing real estate tax assessments to all circuit courts.

Reports

This bill would require each board of equalization to prepare an annual written report of its actions which would include an evaluation of the impact of this bill. This report would be available to the public. It is anticipated that each board of equalization would meet this requirement by preparing a brief report which would be attached to a compilation of the order forms issued by the board to correct assessments that year. The bill would also require TAX to redesign these order forms no later than January 1, 2004.

Education of Boards of Equalization by TAX

TAX currently provides a half-day course to new board members that explains appraisal principles and practice. This bill would require TAX to update the basic course of instruction for board of equalization members to incorporate the changes made by this bill, including what constitutes evidence of generally accepted appraisal practice. TAX anticipates meeting this requirement by expanding its basic course of instruction to include a discussion of this legislation. This bill would also require TAX to provide continuing education to members of boards of equalization so that each member would be able to take a course at least once every four years. TAX anticipates that this continuing education will take the form of a refresher course held in conjunction with the current half-day session provided to new board members.

Report by TAX

This bill would require TAX to monitor the results of board of equalization appeals of assessments and report to the 2006 Session of the General Assembly as to the fairness, efficiency, ease and cost of appeals to boards of equalization, with emphasis on the processes and standards established by this act.

cc : Secretary of Finance

Date: 01/31/03

