

**DEPARTMENT OF TAXATION
2008 Fiscal Impact Statement**

1. Patron Frederick M. Quayle

3. Committee Senate Finance

4. Title Real Estate Assessments; Burden of Proof
on Appeal.

2. Bill Number SB 789

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill provides that, in an appeal of an assessment by a taxpayer to the board of equalization or circuit court, the burden of proof is on the commissioner of revenue or other local assessing official when the assessment of real property is 20% greater than the previous assessment. The commissioner of revenue or other local assessing officer would need to prove that the assessment was accurately computed according to generally accepted appraisal practices. Any increase in the assessment associated with new construction or other improvements, an increase in the amount of property, or rezoning would not be considered in calculating the percentage increase in assessment from the previous year.

The effective date of this bill is not specified.

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

7. Budget amendment necessary: No.

8. Fiscal implications:

This bill would have no impact on state revenues. In recent years, a 20 percent increase in real property assessments is not uncommon, especially in cities and counties that do not conduct a general reassessment every year. This bill would lead to more appeals and may make it easier for taxpayers to win appeals. To the extent that taxpayers win the appeals, there would be a negative impact on local revenue.

9. Specific agency or political subdivisions affected: All localities.

10. Technical amendment necessary: No.

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.

Evidentiary Standards

For purposes of appeals to boards of equalization, there is 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.

For the purposes of appealing to the circuit court, the burden of proof also falls on the taxpayer. The appellant must demonstrate that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal.

Existing law declaring that the burden of proof is on the taxpayer follows the long-standing common law tradition of requiring the plaintiff to prove his case. Occasional suggestions to place the burden of proof on federal or state tax officials have not been universally supported by taxpayers and tax practitioners. The concern has been that the tax official will build a stronger case for his actions knowing that he has to meet a higher burden of proof. Unfortunately, the investigative techniques necessary to build a stronger case are both more invasive of the taxpayer's privacy and more costly for the tax official.

Proposal

This bill provides that, in an appeal of an assessment by a taxpayer to the board of equalization or circuit court, the burden of proof is on the commissioner of revenue or other local assessing official when the assessment of real property is 20% greater than the previous assessment. The commissioner of revenue or other local assessing officer would need to prove that the assessment was accurately computed according to generally accepted appraisal practices. Any increase in the assessment associated with new construction or other improvements, an increase in the amount of property, or rezoning would not be considered in calculating the percentage increase in assessment from the previous year. This would set up a system whereby boards of equalization and courts would have to apply different evidentiary standards depending on the amount of the assessment, the type of assessment, and the type of tax.

Similar Legislation

House Bill 602 is identical to this bill.

cc : Secretary of Finance

Date: 1/28/2008 jkl
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