DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. **Patron** Vivian E. Watts

2. **Bill Number** HB 223
   House of Origin:
   X **Introduced**
   ___ **Substitute**
   ___ **Engrossed**

   Second House:
   ___ **In Committee**
   ___ **Substitute**
   ___ **Enrolled**

3. **Committee** House Rules

4. **Title** Estate Tax; Reinstate to Fund Nursing Home Staffing Standards.

5. **Summary/Purpose:**

This bill would effectively reinstate the Virginia estate tax by requiring that the maximum amount of the federal credit for state estate taxes be equal to the federal credit as it existed on January 1, 1978. The estate tax would not be imposed on a gross estate if the majority of the assets of the total estate are an interest in a closely held business or working farm.

All moneys collected would first be required to be used to fund staffing standards in nursing homes, which would require a minimum amount of direct care services to each resident per 24-hour period. Any remaining moneys would be used as provided in the general appropriation act.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2010. The first required minimum staffing standard would be required to be met by July 1, 2011.

6. **Fiscal Impact Estimates are:** Tentative. (See Line 8.)

6a. Expenditure Impact:

Fiscal Year	***Dollars***	***Fund***
2010-11	$0	GF
	$0	NGF
2011-12	$20,994,692	GF
	$20,994,692	NGF
2012-13	$21,834,438	GF
	$21,834,438	NGF
2013-14	$22,707,815	GF
	$22,707,815	NGF
2014-15	$23,616,128	GF
	$23,616,128	NGF
2015-16	$48,725,383	GF
	$48,725,383	NGF

7. Budget amendment necessary: Yes.
Page 1, Revenue Estimate
Department of Medical Assistance Services: Item 197, Subprogram 45610

8. Fiscal implications:

Administrative Costs

TAX has not assigned any administrative costs to this bill for the reinstatement of the estate tax because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Department of Medical Assistance Services ("DMAS") Expenditure Impact

Using calendar year 2005 nursing home wage survey data and cost report data on nursing home days, DMAS calculates that approximately 67 percent of nursing homes will have to add a total of 2.6 million nursing hours by Fiscal Year 2012, a 9 percent increase over the total nursing hours currently provided nursing home residents statewide, to meet the Fiscal Year 2012 staffing standard. Approximately 1.8 million additional nursing hours would be reimbursed by Medicaid in Fiscal Year 2012. When the standard is increased from 3.5 hours to 3.9 hours, Medicaid will reimburse another 1.9 million additional hours and when the standard is increased to 4.1 hours, Medicaid will reimburse another 1.0 million hours.

The average cost in 2005 for each additional nursing hour worked was $17.70. The staffing cost was adjusted 3 percent annually for inflation. Based on these assumptions, this legislation will result in $42.0 million ($21.0 million General Fund) in additional Medicaid reimbursement for nursing facilities in Fiscal Year 2012. The requirement of 3.9 nursing hours per resident per day by Fiscal Year 2016 will result in $97.5 million ($48.7 million General Fund) in additional Medicaid reimbursement for nursing facilities in Fiscal Year 2016. Medicaid expenditures would potentially increase prior to the deadlines for the higher requirements if facilities attempt to achieve the higher staffing standard before it is actually required.

As written, the bill would also have a non-Medicaid fiscal impact requiring the Commonwealth to subsidize nursing homes for the increased cost of meeting the higher standards for non-Medicaid residents. According to the Patron, she did not intend that the bill have a non-Medicaid fiscal impact and will be introducing the technical amendment suggested below. Therefore, no fiscal impact has been calculated for non-Medicaid residents.

Revenue Impact

In Fiscal Year 2008, the most recent year for which estate tax return data is available, estate tax revenue totaled $153 million. At that time, the estate tax threshold under federal law meant that the estate tax was imposed on estates valued at $2 million or more. Currently, there is no federal estate tax applicable for 2010. Beginning in 2011, the federal estate tax will be imposed on estates valued at $1 million or more.

Based on current law set to take effect in 2011 which provides an estate tax threshold set at $1 million and brings back the federal credit for state estate taxes, the revenue gain for this bill may exceed $153 million on an annual basis. However, the revenue impact of this bill would depend on whether there are changes to the current federal threshold for the estate tax.

Currently, there is pending federal legislation that would continue the estate tax as it was in 2009, which would impose the tax on estates valued at $3.5 million or more and allow no federal credit for state estate taxes. If that legislation were to be enacted, this bill would create an annual revenue gain of $120.9 million, based on data from estate tax returns processed during Fiscal Year 2008 for estates valued at $3.5 million or more.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Health
Department of Medical Assistance Services

10. Technical amendment necessary: Yes.

TAX understands it was the Patron's intent that this bill would only fund the Medicaid costs associated with meeting the staffing standards for nursing homes established by this bill. Therefore, TAX recommends the following technical amendment:

Page 4, Line 219, after funding
Insert: the Medicaid cost of meeting

11. Other comments:

Legislative History

The 2006 Acts of Assembly, Chapter 4, effectively repealed the Virginia estate tax by equating the Virginia estate tax to the current amount of the federal credit allowable for state estate taxes. As there is no federal credit for state estate taxes allowed at this time, there is also no Virginia estate tax.

Prior to the 2006 legislation, Virginia imposed a “pick-up” estate tax that was equal to the maximum amount of the federal credit for state estate taxes as it existed on January 1, 1978. The federal credit for state estate taxes was eliminated by the Economic Growth and Tax Relief Act of 2001 in 2005, but the freeze to 1978 preserved the Virginia estate tax. By striking the language tying the tax to 1978, the 2006 Acts of Assembly, Chapter 4, effectively repealed the Virginia estate tax.

Under the Economic Growth and Tax Relief Act of 2001, the threshold amount of the federal taxable estate was increased over time. The amount was $1.5 million for 2004 and 2005, $2 million for 2006 through 2008, and $3.5 million for 2009. Any estate with a value less than the applicable amount is not subject to the federal estate tax. Currently, there is no federal estate tax applicable for 2010.

The federal law that eliminated the credit for state estate taxes is scheduled to expire after 2010, which would mean that the current Virginia estate tax would be reinstated when the federal credit was again allowed. While Congress is expected to pass estate tax legislation before 2011, the nature of its action cannot be predicted.

Congress has begun to take action on this matter, however. The House of Representatives passed H.R. 4154 on December 3, 2009. This bill would amend the Internal Revenue Code to establish a permanent $3.5 million exclusion amount for decedents dying after December 31, 2009. H.R. 4154 would not, however, reinstate a federal credit for state estate taxes. This bill received a first reading in the Senate on December 24, 2009, but there has been no further action.

State Comparison

As of January 9, 2010, more than two thirds of states did not have an estate tax. The 14 states that have an estate tax in effect are: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Ohio, Oregon, Rhode Island, Vermont, and Washington.

Proposal

This bill would effectively reinstate the Virginia estate tax by requiring that the maximum amount of the federal credit for state estate taxes be equal to the federal credit as it existed on January 1, 1978. The estate tax would not be imposed on a gross estate if the majority of the assets of the total estate are an interest in a closely held business or working farm.

For the personal representative of any estate subject to the Virginia estate tax that is not required to file a federal estate tax return, a Virginia estate tax return would be required to be filed within the 270 days immediately following the death of the decedent. TAX would be allowed to grant an extension of time for filing the Virginia estate tax return or remitting the tax due. TAX would also establish procedures and conditions for an extension.

"Interest in a closely held business" would be defined as an interest as a proprietor in a trade or business carried on as a proprietorship or an interest as a partner in a partnership carrying on a trade or business, if 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, such partnership had 45 or fewer partners, or stock in a corporation carrying on a trade or business if 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or such corporation had 45 or fewer shareholders.

"Working farm" would be defined as an interest in a closely held business that operates as an active trade or business for agricultural purposes.

All moneys collected would first be required to be used to fund staffing standards in nursing homes, which would require a minimum amount of direct care services to each resident per 24-hour period. Any remaining moneys would be used as provided in the general appropriation act.

The bill would require the Board of Health to promulgate regulations to establish staffing standards in nursing homes. These new regulations would require that the minimum amount of direct care services to each resident per 24-hour period would be 3.5 hours per patient per day by July 1, 2011, 3.9 hours by July 1, 2015, and 4.1 hours by July 1, 2017. Any facility that fails to maintain staffing levels sufficient to provide at least three hours of direct care services per patient per day by July 1, 2011 and at least 3.3 hours of direct care services per patient by July 1, 2017 would be ineligible to accept new patients.

Under the normal skilled nursing facilities reimbursement methodology, DMAS would not increase reimbursement to nursing facilities until at least a year after the nursing facilities have increased their staffing levels and the costs are reflected in their cost reports. Nursing facilities cannot absorb these types of significant cost increases and the expenditure estimates above assume the reimbursement would be adjusted prospectively when the staffing requirements are enacted.

This bill would be effective for the estates of Virginia decedents dying on or after July 1, 2010. The first required minimum staffing standard would be required to be met by July 1, 2011.

Similar Bills

House Bill 275 is similar to this bill, but the tax would be equal to the maximum amount of the federal credit if such a credit existed; and, if no federal credit existed, the Virginia tax would be one-half of the maximum amount of the federal credit as it existed on January 1, 1978, effective for the estates of Virginia decedents dying on or after July 1, 2010.

cc : Secretary of Finance

Date: 1/26/2010 JKL
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