

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** Rosalyn R. Dance

3. **Committee** House Finance

4. **Title** Real Property Tax; Assessments for
Affordable Housing

2. **Bill Number** HB 233

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would expand the special assessment rules for affordable housing to properties with four or fewer units. This bill would also authorize real estate assessors to require owners of affordable rental housing containing four or fewer residential units who apply to have this property assessed under the special assessment rules to furnish the assessor with statements of the income and expenses attributable to the property. In addition, the bill would prohibit the real estate assessor from reducing the capitalization rate in determining the value for affordable housing. The bill would also lower the burden of proof to a preponderance of the evidence for a taxpayer seeking to show that the real estate assessor's valuation is erroneous. Finally, in all localities, the bill would provide that any determination of the assessment by the Board of Equalization on affordable renting housing would be deemed presumptively correct for the succeeding two years or the remainder of the assessment cycle, whichever occurs first, unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred.

Under current law, owners of affordable housing containing more than four units may apply to the locality to have the real property assessed under special rules for affordable housing, provided certain requirements are met. Generally, real property assessors may require that owners of income-producing real estate furnish statements to the assessor of the income and expenses attributable to each such parcel of real estate; however, income producing property with no more than four dwelling units are excluded from this requirement. Current law also requires that a taxpayer seeking to show that the real estate assessor's valuation is erroneous must produce substantial evidence that the valuation determined by the assessor is erroneous and was not arrived at in accordance with generally accepted appraisal practice. Finally, under current law, in the City of Virginia Beach, determinations as to the accuracy of the assessment made by the Board of Equalization are deemed presumptively correct for the succeeding two years, unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred.

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. To the extent that this bill results in lower assessments for affordable housing, it would result in a local revenue loss, the amount of which is unknown.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Valuation

Under current law, there are three methods that may be used for assessing real estate: 1) the sales comparison method; 2) the replacement cost less depreciation method; and 3) the capitalization of income method. The capitalization of income method values the property as the net present value of the future stream of income that will be generated by the property. Under the capitalization method, the assessor uses a projected capitalization rate in order to value the sales price of real property. The lower the capitalization rate, the higher the property will be valued. Under current law, when using the capitalization of income method to value real property, the assessor must use economic rent, which is the amount that a typical lessee would be willing to pay for the right to use and occupy the premises, rather than the actual contract rent. However, current law requires the assessor to consider the contract rent and actual expenses regarding the property as evidence of economic rent.

When determining the fair market value of real property operated as affordable housing, localities must consider: 1) the impact of any legally imposed rent restrictions; 2) any additional operating expenses associated with affordable housing compliance requirements and 3) any legally imposed restrictions on the transfer of title or other restraints on alienation. Federal or state income tax credits with respect to affordable housing are not to be considered real property or income attributable to real property.

Under current law, owners of real property containing more than four residential units that is operated as affordable rental housing may apply to the locality in which the property is located to have the property assessed under the special assessment rules for affordable rental housing. Localities determine the definition of affordable rental housing by ordinance or resolution, and are required to grant an owner's application for special assessment if: 1) the owner charges rents at levels that meet the locality's definition of affordable housing, and 2) the real property does not have any pending building code violations at the time of the application.

Information Obtained by Assessors

Localities are currently authorized to obtain from owners of income-producing real estate, statements of income and expenses regarding the property. Income-producing property with no more than four dwelling units is excluded from this requirement.

Boards of Equalization

Circuit courts within each county or city are authorized to appoint a Board of Equalization of real estate assessments, whose purpose is to hear complaints regarding a lack of uniformity or errors in acreage in a real property assessment, and complaints that real property is assessed at more than fair market value. Once the Board hears these complaints, it is authorized to increase or decrease assessments based on fairness. The taxpayer has the burden of proving that the property in question is valued at more than its fair market value, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized. The taxpayer is required to produce substantial evidence that the valuation determined by the assessor is erroneous and was not arrived at in accordance with generally accepted appraisal practice in order to receive relief. Virginia law specifically provides that in the City of Virginia Beach, once the Board makes a determination of the assessment, their decision is presumed correct for the succeeding two years, unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred.

Proposal

This bill would expand the special assessment rules for affordable housing to properties with four or fewer units. This bill would also authorize real estate assessors to require owners of affordable rental housing containing four or fewer residential units who apply to have this property assessed under the special assessment rules to furnish the assessor with statements of the income and expenses attributable to the property. In addition, the bill would prohibit the real estate assessor from reducing the capitalization rate in determining the value for affordable housing. The bill would also lower the burden of proof to a preponderance of the evidence for a taxpayer seeking to show that the real estate assessor's valuation is erroneous. Finally, in all localities, the bill would provide that any determination of the assessment by the Board of Equalization on affordable renting housing would be deemed presumptively correct for the succeeding two years or the remainder of the assessment cycle, whichever occurs first, unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred.

The effective date of this bill is not specified.

Similar Legislation

Senate Bill 273 is identical to this bill.

House Bill 430 would require 1) that the fair market value of certain affordable housing be determined using income production assessment methodology, based on the property's

current use and restrictions and 2) that a locality's real property sales assessment ratio higher than 110% is prima facie proof that the locality has failed to assess at 100% of fair market value. The bill would also provide 3) additional requirements for real estate assessors; 4) taxpayer's access to certain information related to assessments; and 5) additional requirements related to Boards of Equalization.

House Bill 570 would change the burden of proof from the taxpayer to the assessor when a taxpayer appeals the assessment of real property to a Board of Equalization or to a circuit court.

House Bill 577 would increase the time a taxpayer may appeal the assessment of his real estate to the commissioner of the revenue 1) from three years to five years from the last day of the tax year for which the assessment is made; or 2) from one year to three years from the date of the assessment, whichever is later.

Senate Bill 271 would authorize the Board of Supervisors of localities with a county manager plan of government to appoint a board of equalization of Real Estate Assessments.

cc : Secretary of Finance

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