

# DEPARTMENT OF TAXATION

## 2010 Fiscal Impact Statement

1. **Patron** Mary Margaret Whipple

2. **Bill Number** SB 273

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

3. **Committee** Passed by House and Senate

4. **Title** Real Property Tax; Changes to Tax  
Assessment Procedure

**Second House:**

           **In Committee**

           **Substitute**

  X   **Enrolled**

### 5. **Summary/Purpose:**

This bill would require that real property that is generating income as affordable housing be assessed using the income approach based on the property's current use, any income restrictions on the property, and any arms length contract provisions entered into with respect to the real property.

Under current law, owners of real property containing more than four residential units operated in whole or in part as affordable housing may apply to the locality to have the real property assessed under special rules for affordable housing, provided certain requirements are met. Currently, there is no mandate as to which approach to use, in making the assessment.

This bill would become effective for assessments for tax years beginning on or after January 1, 2011.

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. This bill has the potential to decrease local revenues to the extent that it results in lower real property assessments.

9. **Specific agency or political subdivisions affected:**

All localities

10. **Technical amendment necessary:** No.

## 11. Other comments:

### Assessments

Article X, Section 1 of the *Virginia Constitution* requires that all property be subject to tax. All taxes must be levied and collected under general laws and must be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Article X, Section 2 requires all assessments of real estate and tangible personal property be made at their fair market value, and authorizes the General Assembly to define and separately classify certain real estate, depending upon its use.

Under current law, there are three methods that may be used for assessing real estate: 1) the sales comparison method (market approach); 2) the replacement cost less depreciation method (cost approach); and 3) the capitalization of income method (income approach). 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.

In 2006, the General Assembly enumerated three special assessment considerations for assessing affordable rental housing when in accordance with the state law, local ordinance or § 42 of the Internal Revenue Code ("IRC"). 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.

### Proposal

This bill would require that real property that is generating income as affordable housing be assessed using the income approach based on the property's current use, any income restrictions on the property, and any arm length contract provisions entered into with respect to the real property, including, but not limited to restrictions on the transfer of title or other restraints on alienation of the real property. As federal or state income tax credits would not be considered real property or income attributable to real property, assessors would be prohibited from considering them in determining the income that would be generated by the property. The assessor would still be required to consider the rent and the impact of applicable rent restrictions; the operating expenses and expenditures and the impact of any such additional expenses or expenditures; and any restrictions on the transfer of title or other restraints on alienation of the real property in determining the potential income the property would generate.

This bill would become effective for assessments for tax years beginning on or after January 1, 2011.

### Similar Legislation

**House Bill 233** is identical to this bill.

**House Bill 430** would provide 1) that the fair market value of certain affordable housing be determined using the income approach, based on the property's current use, restrictions, and applicable contract provisions; 2) that a locality's real property sales assessment ratio higher than 130% is prima facie proof that the locality has failed to assess at 100% of fair market value; 3) additional requirements for real estate assessors; 4) additional taxpayer access to certain information and notice concerning hearings 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.

cc : Secretary of Finance

Date: 3/9/2010 KP  
DLAS File Name: SB273FER161.