DEPARTMENT OF TAXATION
2014 Fiscal Impact Statement

1. **Patron** J. Randall Minchew

2. **Bill Number** HB 558
   House of Origin:
   X **Introduced**
   ____ **Substitute**
   ____ **Engrossed**

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

3. **Committee** House Finance

4. **Title** State recordation taxes and fees.

5. **Summary/Purpose:**

   This bill would require clerks of the circuit court to accept an affidavit of appraisal as the fair market value on which recordation taxes and fees are based provided certain information is included in the affidavit. The bill would also codify the current practice in which parties to a deed or other instrument allocate the liability for recordation taxes among themselves and make other clarifying changes.

   The effective date of the bill is not stated.

6. **Budget amendment necessary:** No.

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

8. **Fiscal implications:**

   The one substantive change made by this bill would affect long-term leases recorded after a substantial delay. The bill would base the tax on the number of years remaining, limited by the actual value as of the recordation date. Existing law bases the tax on the term and value as of the date of execution. While the reduction in the term would normally reduce tax revenue, the tax on many long-term leases is limited by the actual value of the property leased. Because the value of property may increase or decrease over time, the revenue impact of this change is indeterminable.

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

   Department of Taxation
   Cities and counties

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

11. Other comments:

This bill makes several technical and clarifying changes in the laws related to recordation taxes.

Actual Value

The bill would define the term "actual value" as fair market value, which is consistent with rulings of the courts, Attorney General and Tax Commissioner. The definition requires the clerk of the circuit court to accept an affidavit of appraisal as evidence of the fair market value provided that the affidavit includes:

- A brief description of the property appraised;
- The name of the appraiser who prepared the appraisal report;
- The appraised value of such property as indicated by the appraisal report;
- That the appraisal report indicates that the appraiser is licensed under § 54.1-2011, or if the property is located outside of the Commonwealth, that the appraiser is licensed in the state in which the property is located together with the name of the licensing agency and license number of the appraiser;
- The date as of which the property was appraised, which must be within six months of the date that the instrument is recorded;
- That there have been no changes in the property since the date as of which the property was appraised that would affect the appraiser's valuation of the property; and
- That the appraisal report indicates that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), or any applicable regulations of the licensing agency of the state in which the property is located.

If no affidavit of appraisal is presented then the clerk may use the most recent property tax assessed value. In any event, the clerk retains the authority to investigate the facts and circumstances and may adjust the amount of the appraisal or property tax assessed value if the facts justify it.

Allocation

The bill would codify the long-standing practice of parties to a real estate transaction allocating costs between themselves by contract. This would not affect how the tax is calculated or whether or not it qualifies for an exemption. For example, the grantors' tax would continue to be based on the value of grantors' interest conveyed, net of any liens or encumbrances that are not paid off and released as part of the transaction, without regard to who is required to pay recording costs under a contract between the parties. Similarly, an exemption that is based on the status of the grantor would not be affected if the parties agreed that the grantee should pay all recording costs.

Deed of Trust

This bill would clarify that the amount secured must be apportioned when the property securing the obligation either straddles the border with another state or consists of two or more parcels located both within and without Virginia. It would also clarify what qualifies as a refinancing for purposes of applying the reduced tax rates.

Leases

When a lease is recorded the tax is based on the annual rent multiplied by the number of years of the lease, but limited to the actual value of the property. This bill would change the calculation of the tax to base it on the number of years remaining on the lease, limited by the value on the date recorded. Existing law bases tax on the term and value as of the date the lease was signed. Most long-term leases are recorded soon after they are signed; however when there has been a substantial delay in recording this bill would affect the calculation of the tax.

Supplemental and Wraparound Deeds of Trust

This bill would move and clarify provisions relating to wraparound deeds of trust. It would also clarify the calculation of tax for transactions involving more than $10 million, codifying an opinion of the Attorney General. See 1987-1988 Att'y Gen. Ann. Rep. 563.

Other Legislation

House Bill 763 addresses non-tax issue in recordation. Both bills are a recommendation of the Real Estate Section of the Virginia Bar Association.

cc : Secretary of Finance

Date: 1/17/2014 JPJ
DLAS File Name HB558F161