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HOUSE BILL NO. 558

Offered January 8, 2014
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A BILL to amend and reenact §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-803, 58.1-807, 58.1-809, and 58.1-812 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-800.1, relating to state recordation taxes and fees.

Patron—Minchew

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-801, 58.1-802, 58.1-802.2, 58.1-803, 58.1-807, 58.1-809, and 58.1-812 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 58.1-800.1 as follows:

§ 58.1-800.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Actual value" means the fair market value of the property conveyed by an instrument subject to this chapter. Fair market value shall be determined as follows:

1. The clerk shall accept, subject to subdivision 3, an affidavit of appraised value from the person who presents the instrument for recordation or from any party to the instrument. The affidavit shall contain a brief description of the property appraised and shall state (i) that such property is the subject of an appraisal report; (ii) the name of the appraiser who prepared the appraisal report; (iii) the appraised value of such property as indicated by the appraisal report; (iv) 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; (v) the date as of which the property was appraised, which must be within six months of the date that the instrument is recorded; (vi) 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 (vii) that the appraisal report indicates that the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP), as developed by the Appraisal Standards Board of the Appraisal Foundation, and the regulations of the Virginia Real Estate Appraiser Board, 18VAC130-20, or any applicable regulations of the licensing agency of the state in which the property is located.

2. In the absence of an affidavit pursuant to subdivision 1, and subject to subdivision 3, the clerk may use the current tax-assessed value of the property as shown on the tax assessor's records before any reductions pursuant to a local land use program or otherwise.

3. The clerk may, but shall not be required to, make an inquiry into the value of the property and seek other extrinsic evidence acceptable to the clerk and may adjust the appraised or assessed value if his inquiry determines that it is necessary to arrive at the fair market value of the property. Factors that shall justify such an adjustment include, but are not limited to, discovery that (i) the instrument conveys personal property (along with the real property) that is not included in the appraised or assessed value, (ii) there has been a significant change in the property since the date of the appraisal or last general reassessment, or (iii) the Department's annual Virginia Assessment/Sales Ratio Study indicates that the locality's assessed values are significantly above or below recent property sales.

4. The acceptance of an affidavit of appraisal by the clerk for purposes of the taxes and fees imposed under this chapter shall not affect the authority of a Board of Equalization or a commissioner of the revenue or other assessing official with regard to determining the assessed value of the property, nor shall it affect the authority of the Department to audit, assess, or enforce any other tax or fee that it administers.

§ 58.1-801. Deeds generally; charter amendments.

A. On every deed admitted to record, except a deed exempt from taxation by law, there is hereby levied a state recordation tax. The rate of the tax shall be 25 cents on every $100 or fraction thereof of the consideration of the deed or the actual value of the property conveyed, whichever is greater.

Upon deeds conveying property lying partly within the Commonwealth and partly without the Commonwealth, the tax herein imposed shall apply only to the ~~value~~ *consideration or actual value* of so much of the property conveyed as is situated within the Commonwealth.

B. When the charter of a corporation is amended, and the only effect of such amendment is to change the corporate name of such corporation, the tax upon the recordation of a deed conveying to, or

vesting in, such corporation under its changed name, the title to any or all of the real or personal property of such corporation held in its name as it existed immediately prior to such amendment, shall be 50 cents.

§ 58.1-802. Additional tax paid by grantor; collection.

A. In addition to any other tax imposed under the provisions of this chapter, a tax is hereby imposed on each deed, instrument, or writing by which lands, tenements or other realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in the purchaser, or any other person, by such purchaser's direction. The rate of the tax, when the consideration or *actual* value of the interest, whichever is greater, exceeds $100, shall be 50 cents for each $500 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance. No increase in the city or county recordation tax authorized by § 58.1-814 shall be deemed authorized by this section.

~~The~~ *Unless otherwise allocated by the parties to the transaction, the* tax imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument or writing subject to the tax imposed by this section.

No such deed, instrument or other writing shall be admitted to record unless (i) the amount of the consideration *or actual value* is stated on the first page of the document to be admitted to record *or on the cover sheet submitted therewith* and (ii) certification of the clerk of the court wherein *the deed or other instrument is* first recorded has been affixed thereto that the tax imposed by this section has been paid. The clerk shall include within the certificate the amount of such tax collected thereon.

B. Taxes imposed by this section shall be collected as provided in § 58.1-812 and the clerk shall return taxes collected hereunder one-half into the state treasury and one-half into the treasury of the locality.

The local portion of the tax imposed by this section on property which is located in more than one jurisdiction shall be collected by the clerk in proportion to the value of the property located in each such locality when recorded therein.

Every clerk of court collecting taxes under this section for the county or city which he serves shall be entitled to compensation for such service at five percent of the amount so collected and paid.

§ 58.1-802.2. (Contingent expiration date) Regional congestion relief fee.

In addition to any other tax or fee imposed under the provisions of this chapter, a fee, delineated as the "regional congestion relief fee," is hereby imposed on each deed, instrument, or writing by which lands, tenements, or other realty located in any county or city in a Planning District described in this section is sold and is granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or any other person, by such purchaser's direction. The fee shall be imposed in a Planning District established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2 that (i) as of January 1, 2013, has a population of two million or more, as shown by the most recent United States Census, has not less than 1.7 million motor vehicles registered therein, and has a total transit ridership of not less than 50 million riders per year across all transit systems within the Planning District or (ii) as shown by the most recent United States Census meets the population criteria set forth in clause (i) and also meets the vehicle registration and ridership criteria set forth in clause (i). The rate of the fee, when the consideration or *actual* value of the interest, whichever is greater, equals or exceeds $100, shall be $0.15 for each $100 or fraction thereof, exclusive of the value of any lien or encumbrance remaining thereon at the time of the sale, whether such lien is assumed or the realty is sold subject to such lien or encumbrance. In any case in which the fee is imposed pursuant to clause (ii) such fee shall be effective beginning on the July 1 immediately following the calendar year in which all of the criteria under such clause have been met.

~~The~~ *Unless otherwise allocated by the parties to the transaction, the* fee imposed by this section shall be paid by the grantor, or any person who signs on behalf of the grantor, of any deed, instrument, or writing subject to the fee imposed by this section.

No such deed, instrument, or other writing shall be admitted to record unless certification of the clerk wherein first recorded has been affixed thereto that the fee imposed pursuant to this section has been paid.

Fees imposed by this section shall be collected by the clerk of the court and deposited into the state treasury as soon as practicable. Such fees shall then be deposited into special funds established by law. In the case of Planning District 8, the revenue generated and collected therein shall be deposited into the fund established in § 15.2-4838.01. For additional Planning Districts that may become subject to this section, funds shall be established by appropriate legislation.

§ 58.1-803. Deeds of trust or mortgages; maximum tax.

A. *1.* A recordation tax on deeds of trust or mortgages is hereby imposed at a rate of 25 cents on every $100 or portion thereof of the amount of bonds or other obligations secured thereby, *except as otherwise provided in subsections D and E.* In the event of an open or revolving deed of trust, the amount of the obligation for purposes of this section shall be the maximum amount which may be

outstanding at any one time.

2. In any case in which the amount which may be secured under a deed of trust or mortgage is not ascertainable, or in which the obligations described are not fully secured because they exceed the ~~fair market~~ *actual* value of the property conveyed, the tax *imposed under this section* shall be based upon the ~~fair market~~ *actual* value of the property conveyed, determined as of the date of the deed of trust or mortgage. ~~The fair market~~ *However, the actual* value of the property shall ~~include~~ *be increased by* the value of any realty required by the terms of the deed of trust or mortgage to be constructed thereon.

B. On deeds of trust or mortgages upon the works and property of a railroad lying partly within the Commonwealth and partly without the Commonwealth, the tax shall be only upon such proportion of the amount of bonds, or other obligations secured thereby, as the number of miles of the line of such company in the Commonwealth bears to the whole number of miles of the line of such company conveyed by such deed of trust or mortgage, *subject to the limitation set forth in subdivision A 2*.

~~Upon~~ *On* deeds of trust or mortgages conveying ~~other~~ *(i)* property lying partly within the Commonwealth and partly without the Commonwealth *or (ii) property within the Commonwealth to secure bonds or obligations that are also secured by deeds of trust or mortgages conveying property outside of the Commonwealth,* the tax herein imposed shall be only upon such proportion of the ~~debt secured~~ *bonds or obligations* as the value of the property located within the Commonwealth, or which may be brought into the Commonwealth, bears to the *value of the* entire amount of property conveyed by such deed of trust or mortgage *or to the entire amount of property conveyed by all of such deeds of trust or mortgages to secure the bonds or obligations, subject to the limitation set forth in subdivision A 2*.

C. On deeds of trust or mortgages, which provide for an initial issue of bonds, to be followed thereafter by additional bonds, unlimited in amount, if such deed of trust or mortgage provides that as and when such additional bonds are issued a supplemental indenture shall be recorded in the office in which the original deed of trust or mortgage is first recorded, which supplement shall contain a statement as to the amount of the additional bonds to be issued, then the tax shall be paid upon the initial amount of bonds when the original deed of trust is recorded and thereafter on each additional amount of bonds when the supplemental indenture relating to such additional bonds is recorded.

~~On deeds of trust or mortgages which are supplemental to or wrap around existing deeds of trust, or which modify the terms of an existing debt with the same lender, on which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the face amount of the bond or obligation secured thereby which is in addition to the amount of the existing debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the amount of the existing debt.~~

D. On ~~deeds of trust or mortgages, the purpose of which is to refinance an existing debt, which debt is~~ *any deed of trust or mortgage securing bonds or other obligations the proceeds of which are used to pay off or pay down the principal balance of existing bonds or other obligations (hereinafter, the refinancing deed of trust), which existing bonds or other obligations were* secured by a deed of trust or mortgage on which the tax imposed hereunder has been paid *(hereinafter, the existing deed of trust)*, the tax shall be paid ~~only on that portion of the amount of the bond or other obligation~~ *on the amount of the bonds or other obligations* secured ~~thereby~~ *by the refinancing deed of trust* determined in accordance with the following schedule:

On the first $10 million of ~~value as determined~~ *the bonds or other obligations* pursuant to this section, 18 cents ($0.18) upon every $100 or portion thereof;

On the next $10 million of ~~value as determined~~ *the bonds or other obligations* pursuant to this section, 16 cents ($0.16) upon every $100 or portion thereof;

On the next $10 million of ~~value as determined~~ *the bonds or other obligations* pursuant to this section, 14 cents ($0.14) upon every $100 or portion thereof;

On the next $10 million of ~~value as determined~~ *the bonds or other obligations* pursuant to this section, 12 cents ($0.12) upon every $100 or portion thereof; and

On all over $40 million of ~~value as determined~~ *the bonds or other obligations* pursuant to this section, 10 cents ($0.10) upon every $100 or portion thereof, incorporated into this section.

~~The instrument shall certify the deed book and page number of the recorded instrument on which the tax for the original debt was paid. For purposes of this subsection, the term "value" means the portion of the amount of the bond or other obligation secured by the property conveyed by the deed of trust.~~ *The refinancing deed of trust shall certify the deed book and page number of the existing deed of trust and the original amount of the bonds or other obligations secured thereby.*

E. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture supplemental thereto, other than instruments subject to subsection D, shall be *paid on the amount of the bonds or other obligations secured by such deed of trust, mortgage, or indenture* determined in accordance with the following schedule:

On the first $10 million of ~~value as determined pursuant to this section~~ *the bonds or other obligations*, 25 cents ($0.25) upon every $100 or portion thereof;

On the next $10 million of ~~value as determined pursuant to this section~~ *the bonds or other obligations*, 22 cents ($0.22) upon every $100 or portion thereof;

On the next $10 million of ~~value as determined pursuant to this section~~ *the bonds or other obligations*, 19 cents ($0.19) upon every $100 or portion thereof;

On the next $10 million of ~~value as determined pursuant to this section~~ *the bonds or other obligations*, 16 cents ($0.16) upon every $100 or portion thereof; and

On all over $40 million of ~~value as determined pursuant to this section~~ *the bonds or other obligations*, 13 cents ($0.13) upon every $100 or portion thereof, incorporated into this section.

§ 58.1-807. Contracts generally; leases.

A. Except as hereinafter provided, on every contract, *lease,* or memorandum thereof ~~relating to real or personal~~ *providing for the sale or lease or other disposition of real* property *(or any option therefor)* admitted to record, a recordation tax is hereby levied at the rate of 25 cents on every $100 or fraction thereof of the consideration ~~or value~~ contracted for, *except as otherwise provided in subsection B.*

B. The recordation of a ~~deed of~~ lease for a term of years, or assignment of the lessee's interest therein, or memorandum thereof, shall be taxed according to the provisions of this section, *and the consideration contracted for shall be the annual rental provided in the lease multiplied by the number of years for which the lease runs, or remainder thereof,* unless provided otherwise in § 58.1-809 or unless ~~the annual rental, multiplied by the term for which the lease runs, or remainder thereof,~~ *such consideration* equals or exceeds the actual value of the property leased~~. In such cases~~, *in which case* the tax for recording the ~~deed of~~ *lease* shall be based upon the actual value of the property at the date of ~~lease~~ *recordation*, including the value of any realty required by the terms of the lease to be constructed thereon by the lessor.

C. The recordation of an assignment of the lessor's interest in a lease, or memorandum thereof, shall be taxed according to the provisions of this section, unless the assignment of the lessor's interest in the lease is to provide additional security for an obligation of the lessor *secured by a deed of trust, mortgage, or other instrument* on which the tax has been previously paid, or the assignment of the lessor's interest is made to the person who owns the property which is subject to the lease. In such cases there shall be no tax for recording the lessor's assignment of the lease.

D. Notwithstanding the other provisions of this section, the tax on the recordation of leases of oil and gas rights shall be $25. The tax on the recordation of leases of coal and other mineral rights shall be $50.

E. Notwithstanding the other provisions of this section, the tax on the recordation of leases of outdoor advertising signs owned by a person engaged in the business of outdoor advertising licensed by the Virginia Department of Transportation pursuant to § 33.1-361 shall be $25.

F. Notwithstanding the other provisions of this section, the tax on the recordation of a lease of a communications tower or a communications tower site shall be $75; the tax on the recordation of each lease to affix any communications equipment or antenna to any such tower or other structure shall be $15.

§ 58.1-809. When supplemental writings not taxable.

Sections 58.1-803, 58.1-807, and 58.1-808 are not to be construed as requiring the payment of any tax for the recordation of any deed of trust, deed of subordination, mortgage, contract, agreement, modification, addendum, or other writing supplemental *(hereinafter, the supplemental instrument) that is supplemental* to any ~~such~~ deed *of trust,* mortgage, contract, agreement, modification, addendum, or other writing theretofore admitted to record~~,~~ *(*hereinafter ~~called~~, the prior instrument~~,~~*)* upon which the tax herein imposed has been paid, or which is exempt from the tax herein imposed by reason of subsection C of § 58.1-804, when the ~~sole~~ purpose and effect of the supplemental instrument ~~or writing~~ is to *wrap around the prior interest, to* convey property, in addition to or in substitution, in whole or in part, of the property conveyed in ~~a~~ *the* prior instrument, to secure or to better secure the payment of the amount contracted for in ~~a~~ *the* prior instrument, to alter the priority of the *prior* instrument, *to increase or decrease the amount secured by the prior instrument,* or to modify the terms, conditions, parties, or provisions of ~~such prior instruments, other than to increase the amount of the principal obligation secured thereby~~ *the prior instrument, provided, however, that, if the face amount of the bonds or other obligations secured by the prior instrument as supplemented by the supplemental instrument is greater than the existing amount of the bonds or other obligations secured by the prior instrument, the tax imposed under § 58.1-803 shall be paid on the amount of such increase. The supplemental instrument shall certify the existing amount of the bonds or other obligations secured by the prior instrument. If the amount of the bonds or other obligations secured by the prior instrument as so supplemented exceeds $10 million, the tax on the increase in the amount of such bonds or other obligations secured shall be computed as follows: the tax shall equal the difference between (i) the tax on the total amount of the bonds or other obligations secured by the prior instrument as so supplemented under the rates set forth*

in subsection E of § 58.1-803 less (ii) the amount of tax previously paid attributable to the existing amount of the bonds or other obligations secured by the prior instrument.

The assumption of a deed of trust shall not be separately taxable under §§ 58.1-801, 58.1-803 or § 58.1-807, whether such assumption is by a separate instrument or included in the deed of conveyance.

§ 58.1-812. Payment prerequisite to recordation; exceptions; assessment and collection of tax; penalty for misrepresentation.

A. Except as otherwise provided in this chapter, no deed, deed of trust, contract or other instrument shall be admitted to record without the payment of the tax imposed thereon by law and the fee pursuant to § 58.1-817, as applicable. However, after payment of the tax imposed by this chapter, when an instrument is first offered for recordation, such instrument may thereafter be recorded in the office of any other clerk without the payment of any tax except any local recordation tax as provided in Article 1 (§ 58.1-3800 et seq.) of Chapter 38 of this title. Any instrument may also be recorded free of tax and fee in the office of the clerk where such instrument was originally recorded when the record containing such instrument has been destroyed.

B. The tax on every deed, deed of trust, contract or other instrument shall be determined and collected by the clerk in whose office the instrument is first offered for recordation. The clerk may ascertain the consideration of the deed or of the instrument, the actual value of the property conveyed, and the qualification of the deed or instrument for any exemption claimed by inquiry, affidavit, declaration or other extrinsic evidence acceptable to the clerk. The fee shall be $1 on every recorded deed pursuant to § 58.1-817 and shall be collected by the clerk in whose office the deed is offered for recordation.

C. Any person who knowingly misrepresents the consideration for the interest in property conveyed by a deed or other instrument or any of the other information requested by the clerk of court pursuant to this section shall be guilty of a Class 1 misdemeanor. If an understatement of the consideration is false or fraudulent with intent to evade a tax, a penalty equal to 100 percent of the tax due on the understatement shall be added to the amount of the tax due, plus interest on the tax at a rate determined in accordance with § 58.1-15 from the time the tax was required by law to be filed until paid.

D. Except as otherwise specifically provided, nothing contained in this chapter shall limit the right of the parties to any deed, deed of trust, contract, lease, or other instrument to allocate responsibility for the payment of the recordation taxes and fees imposed under this chapter among themselves in any manner they determine. A clerk who in good faith collects such taxes and fees upon recordation of a deed, deed of trust, contract, lease, or other instrument in reliance upon information provided by the person submitting such deed, deed of trust, contract, lease, or other instrument for recordation shall have no personal liability for any deficiency in the amount of such taxes and fees collected that is later determined to be due and payable.

2. That the provisions of this act shall be applicable to transactions occurring on or after July 1, 2014.

INTRODUCED