

# DEPARTMENT OF TAXATION

## 2011 Fiscal Impact Statement

1. **Patron** Salvatore R. Iaquinto

3. **Committee** House Finance

4. **Title** Real Property Tax; Burden of Proof to  
Appeal Assessments

2. **Bill Number** HB 1588

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would shift the burden of proof from the taxpayer to the assessor when the taxpayer appeals the assessment of real property to a Board of Equalization or to a circuit court, and would remove the presumption that the assessor's valuation of real property is correct. The assessor would have the burden of proving that the property in question is valued at its fair market value or that the assessment is uniform in its application, or that the assessment is otherwise valid or legal. The bill provides that the lack of a physical examination of the property by the assessor shall not be considered in determining whether the county or city meets its burden of proof unless a physical examination of the property was required by the taxpayer.

The bill would also provide that any determination of an assessment by any Board of Equalization shall be 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. Currently, this provision only applies to the City of Virginia Beach.

Under current law, a property owner may appeal to a Board of Equalization or a circuit court seeking relief from an erroneous real property assessment. In all such cases, the taxpayer has the burden of proving that the property in question is valued at more than its fair market value.

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

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

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

### 8. **Fiscal implications:**

This bill would have no impact on state revenues. To the extent that shifting the burden of proof to the assessor results in more successful appeals, this bill may result in a decrease in real property assessments and a loss in local revenues.

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

All localities

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

**11. Other comments:**

Current Law

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.

Under current law, 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. Mistakes of fact, including computations that affect the assessment are deemed not to be in accordance with generally accepted appraisal practice. It is not necessary for the taxpayer to show that the assessment is a result of manifest error or disregards controlling evidence.

Any person assessed with any local tax can also appeal to the circuit court in the locality in which the property subject to tax is located to show that the tax was incorrectly assessed. In these proceedings, the taxpayer has the burden of proving that the property in question is assessed at more than its fair market value, the assessment is not uniform in its application, or the assessment is otherwise invalid or illegal. The taxpayer is not required to show that intentional, systematic and willful discrimination has been made.

In ascertaining and assessing the fair market value of property, assessors and appraisers must make a physical examination of the property if required by the taxpayer and may make a physical examination of the property in any other case they deem it advisable.

Proposal

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#### Similar Legislation

**House Bill 1470** would authorize circuit courts for any locality to appoint up to two alternate board members to serve on local boards of equalization if a member of the board is absent or abstains.

**House Bill 1526** would allow statements of income and expense to be used in a complaint before a Board of Equalization and in an action for relief in court from the determination of the Board of Equalization even if the statements were not timely presented to the assessor. The bill provides that the statements must be submitted to the Board of Equalization at least 30 days prior to the hearing before the Board.

**House Bill 1532** would lower the threshold percentage of taxes and liens on property from 50 percent to 20 percent of the assessed value of the parcel and, if only taxes, from 25 percent to 10 percent of the assessed value of the parcel to allow a special commissioner to convey the real estate to the locality in lieu of a public sale at auction.

**Senate Bill 784** would clarify that a real estate assessor may require an owner of real property with four or fewer residential units that is operated in whole or in part as affordable rental housing to furnish to the assessor a statement of the income and expenses attributable to the property when owner applies to the locality to have the real property assessed as affordable housing.

**Senate Bill 785** would clarify that the partial exemption from the assessed value of real property subject to real property tax for improvements to rehabilitated, renovated, or replacement residential structures may not be reduced during the period of exemption and would clarify that the exemption runs with the land.

cc : Secretary of Finance

Date: 1/14/2011 AM  
DLAS File Name: HB1588F161