

# DEPARTMENT OF TAXATION

## 2011 Fiscal Impact Statement

1. **Patron** Thomas K. Norment, Jr.

2. **Bill Number** SB 1350

3. **Committee** Senate Finance

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

4. **Title** Real Property Tax; Appeals of Assessments

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would provide that the evidentiary standard on a taxpayer when appealing an assessment of real property to a Board of Equalization or to a circuit court is a preponderance of the evidence that the property is valued at more than its fair market value or that the assessment is not uniform in its application.

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, that the assessment is not uniform in its application, or that the assessment is otherwise not equalized. In order to receive relief, the taxpayer must produce substantial evidence that the valuation determined by the assessor is erroneous.

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 lowering the evidentiary standard on the taxpayer 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 practices, procedures, rules and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers, the Appraisal Institute, and the Appraisal Foundation 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. Under Virginia case law, a taxing authority's assessment is presumed to be correct, and a taxpayer challenging the assessment of his or her real property has the burden to rebut that presumption by establishing that the real property in question is assessed at more than fair market value or that the assessment is not uniform in its application. To rebut the presumption of correctness, a taxpayer must show by a clear preponderance of the evidence that the taxing authority committed manifest error or totally disregarded controlling evidence in making the assessment.

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

This bill would lower the burden of proof on a taxpayer when appealing an assessment of real property to a Board of Equalization to a preponderance of the evidence to show that the property has been valued at more than its fair market value or that the assessment is not uniform in its application and that the valuation was not arrived at in accordance with generally accepted appraisal practice.

This bill would provide that in proceedings in a circuit court where a taxpayer is seeking relief from real property taxes, the burden of proof is on the taxpayer to show by a preponderance of the evidence that the property is valued at more than its fair market value or that the assessment is not uniform in its application. If the taxpayers' action is from an adverse decision from a board of equalization, the findings and conclusions by the board on questions of fact would be presumed to be correct. Questions of law would continue to be decided *de novo*, regardless of whether the taxpayer received a decision by a board of equalization.

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.

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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 1588** 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 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.

**House Bill 1899** and **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.

**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.

cc : Secretary of Finance

Date: 1/18/2011 AM  
DLAS File Name: SB1350F161