DEPARTMENT OF TAXATION
2014 Fiscal Impact Statement

1. Patron Brenda L. Pogge

2. Bill Number HB 1153

House of Origin:

__X__ **Introduced**

_____ **Substitute**

_____ **Engrossed**

3. Committee House Courts of Justice

Second House:

_____ **In Committee**

_____ **Substitute**

_____ **Enrolled**

4. Title Real Property Tax Appeals; Attorney Fees

5. Summary/Purpose:

This bill would allow circuit courts hearing appeals of real property tax assessments to award reasonable attorney fees and costs to taxpayers granted relief from real property tax assessments on owner-occupied residential property.

In general, unless there is specific authority allowing a prevailing party to recover attorney fees and costs, the custom is for each party to pay his own attorney fees and costs.

The effective date of this bill is not specified.

6. Budget amendment necessary: No.

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

8. Fiscal implications:

To the extent that courts award attorney fees and costs to taxpayers granted relief from real property tax assessments, this bill would have an unknown negative impact on local revenues. The bill would have no impact on state revenues.

9. Specific agency or political subdivisions affected:

All localities

10. Technical amendment necessary: No.

11. Other comments:

Generally

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.

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. If the court is satisfied from the evidence that the assessment is erroneous and that the erroneous assessment was not caused by the wilful failure or refusal of the applicant to furnish the tax-assessing authority with information required by law, the court may order the assessment corrected. The taxpayer will be relieved of having to pay the erroneous portion of the assessment or, if the tax has been paid, receive a refund with interest.

If the court finds that the property is valued at more than fair market value, the court may reduce the assessment, based on the evidence, to the fair market value of the property involved. Additionally, the court may increase the assessment if it believes that the property is valued at less than fair market value. For the purpose of reducing or increasing the assessment and taxes, the court has all the powers and duties of the authority that made the assessment, as of the time when the assessment was made, and all powers and duties conferred by law upon such authority between the time the assessment was made and the time the appeal is heard.

Attorney's Fees

Rule of the Supreme Court of Virginia 3:25 applies to claims for attorney's fees, excluding attorney's fees for sanctions and in domestic relations cases. Under Rule 3:25, a party seeking to recover attorney's fees must include a demand for such fees in the complaint, counterclaim, or cross-claim. The demand must identify the basis upon which the party relies in requesting attorney's fees. The court may, in advance of trial, establish a procedure to adjudicate any claim for attorney's fees.

Proposal

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cc : Secretary of Finance