

# DEPARTMENT OF TAXATION

## 2016 Fiscal Impact Statement

1. **Patron** John A. Cosgrove

3. **Committee** Senate Finance

4. **Title** Local Tax Appeals; Trial by Jury

2. **Bill Number** SB 597

**House of Origin:**

X **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would provide that circuit court cases regarding appeals of local tax assessments filed or refiled on or after July 1, 2016, may be conducted as a jury trial at the discretion of the taxpayer. The bill also would provide that the jurors must be freeholders of property within the jurisdiction. The verdict of the jury would not need to be unanimous and only a simple majority of the jurors would need to agree in order to reach a verdict.

Under current law, all circuit court proceedings regarding appeals of local tax assessments are conducted as actions at law before the court, sitting without a jury. There is no requirement that a juror or alternate juror be a freeholder of property within the jurisdiction. Currently, all verdicts by juries must be unanimous.

The effective date of this bill is not specified.

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

7. **Fiscal Impact Estimates are:** Unknown. (See Line 8.)

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

#### Administrative Costs

The cost for the local Circuit Courts to implement this bill is unknown. There would be no administrative costs to the Department of Taxation to implement this bill.

#### Revenue Impact

The impact of this bill on local revenues is unknown because it is not known whether jury trials would benefit taxpayers or localities. This bill would have no impact on state revenues.

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

Circuit Courts of Virginia  
All localities

**10. Technical amendment necessary:** Yes.

If the intent of the bill is to require confidential tax information released to all parties to be subject to an order prohibiting disclosure, the following technical amendment is suggested:

Page 1, Line 34, After release  
Strike: to the taxpayer

**11. Other comments:**

Generally

Any person assessed with any local tax can 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. All circuit court proceedings regarding appeals of local tax assessments are conducted as actions at law before the court, sitting without a jury. Other than appeals for real property taxes, the burden of proof rests with the taxpayer to prove that the assessment is incorrect.

In circuit court proceedings seeking relief from real property taxes, except as otherwise provided, taxpayer has the burden of rebutting the presumption that the valuation determined by the assessor or adjusted by the board of equalization is correct. The taxpayer must show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application; and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules and standards as prescribed by nationally recognized professional appraisal organizations and applicable Virginia law.

In any appeal of an assessment by an owner of real property containing less than four residential units, the assessor is required to provide written notice to the owner at least 45 days before the appeal informing him of his right to review the assessment records and to have the assessor make a physical examination of the property. In appeals to a circuit court, the taxpayer is required to make the written request for assessment records no later than 45 days prior to trial, unless otherwise ordered by the court. The assessor has 15 days from the written request to provide the assessment records to the taxpayer. If the assessor fails to do so, prior to the presentation of evidence by the taxpayer at the hearing, the assessor must present: i) copies of the records, ii) testimony to explain methodologies to determine the assessed value of the property, and iii) testimony that states that the assessed value was arrived at in accordance with generally accepted appraisal practices. Upon the conclusion of the presentation of evidence by the assessor, the taxpayer has the burden to rebut such evidence by a preponderance of the evidence.

## Civil Juries

In civil cases in the circuit court where the amount involved exclusive of interest does not exceed \$25,000, five persons from a panel of not less than 11 constitutes the jury. If the amount involved exclusive of interest exceeds \$25,000, seven persons from a panel of not less than 13 constitutes the jury. Verdicts by civil juries must be unanimous and the court may discharge the jury when it appears that they cannot agree on a verdict. There is no requirement that a juror or alternate juror own real property within the jurisdiction.

## Disclosure of Information

Under *Va. Code* § 58.1-3, unless an exception applies, the Tax Commissioner or agent, clerk, commissioner of the revenue, treasurer, or any other state or local tax or revenue officer or employee, or any person to whom tax information is divulged pursuant to law, or any former officer or employee of any of the aforementioned offices may not divulge any information acquired by him in the performance of his duties with respect to the transactions, property, including personal property, income or business of any person, firm or corporation.

It is also unlawful for any person to disseminate, publish, or cause to be published any confidential tax document which he knows or has reason to know is a confidential tax document. A confidential tax document is any correspondence, document, or tax return that is prohibited from being divulged by *Va. Code* § 58.1-3 and includes any document containing information on the transactions, property, income, or business of any person, firm, or corporation that is required to be filed with any state official regarding land preservation tax credits. Any person violating this provision is guilty of a Class 1 misdemeanor.

However, this prohibition does not apply if such confidential tax document has been divulged or disseminated pursuant to a provision of law authorizing disclosure. Additionally, *Va. Code* § 58.1-3 does not apply to confidential documents that were not divulged pursuant to law or acquired pursuant to the duties of any state or local tax or revenue officer or employee. Confidential information that is not tax information is not afforded any protection from disclosure under *Va. Code* § 58.1-3.

## Proposal

This bill would provide that circuit court cases regarding appeals of local tax assessments filed or refiled on or after July 1, 2016, may be conducted as a jury trial at the discretion of the taxpayer. The bill also would provide that prior to the release of confidential tax information to the taxpayer, pursuant to discovery or otherwise, for the purposes of proceeding with the appeal, the circuit court must order the parties not to disclose, exhibit, or discuss the confidential information unless otherwise ordered by the court. The bill would require the order to inform the parties that violating the order is punishable as a Class 1 misdemeanor.

The bill would require the order to provide that the confidential tax information regarding the assessed property only may be revealed to or discussed with the following persons in connection with the review or litigation of the assessment of such property: 1) the parties;

2) counsel for any party and employees of the counsel's firm; 3) outside experts retained by and assisting counsel for any party in the trial or preparation for the trial; 4) the court or an administrative board reviewing the assessment, jurors, employees of the court or administrative board, and persons employed to transcribe or record the proceedings; 5) and any person who may be called as a witness and counsel believes in good faith to be necessary for the preparation or presentation of the case.

The bill also would provide that the selection of jurors be made in accordance with current selection process of jurors for other civil cases. Five persons from a panel of not fewer than 13 jurors would constitute the jury. The conclusion of the jury would not need to be unanimous, but only agreed to by a majority of the jurors. The bill would require that the circuit court proceedings follow the Uniform Pretrial Schedule Order provided in the Rules of the Supreme Court unless otherwise agreed to by all parties. Any reference to the fiscal impact of the jury's decision on the local jurisdiction would be strictly prohibited.

The effective date of this bill is not specified.

### Similar Legislation

**House Bill 910** is identical to this bill.

cc : Secretary of Finance

Date: 2/1/2016 AM  
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