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**HOUSE BILL NO. 2038**

Offered January 11, 2017

Prefiled January 10, 2017

*A BILL to amend and reenact § 58.1-803 of the Code of Virginia, relating to recordation tax; deeds of trust or mortgages; refinancing.*

Patrons—Murphy, Boysko, Kory, Plum and Simon

Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That § 58.1-803 of the Code of Virginia is amended and reenacted as follows:****§ 58.1-803. Deeds of trust or mortgages; maximum tax.**

A. 1. Except as provided in this section, 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. In the event of an open, credit line, or revolving deed of trust, the amount of the obligation for purposes of this section shall be the maximum amount secured that may be outstanding at any one time, regardless of the amount owed or outstanding at the time the instrument is recorded.

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 value of the property conveyed, the tax shall be based upon the fair market value of the property conveyed, determined as of the date of the deed of trust or mortgage. The fair market value of the property shall include 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.

On deeds of trust or mortgages conveying (i) property lying partly within the Commonwealth and partly outside the Commonwealth or (ii) property within the Commonwealth to secure bonds or obligations secured by deeds of trust or mortgages on property outside the Commonwealth, the tax herein imposed shall be only upon such proportion of the bonds or obligations as the actual value of the property located within the Commonwealth, or which may be brought into the Commonwealth, bears to the actual 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, as applicable, subject to the limitations 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.

D. 1. On deeds of trust, mortgages, or other instruments that are supplemental to, wrap around, or modify the terms of an existing deed of trust or mortgage, 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 original debt or obligation secured by the deed of trust or mortgage on which tax has been paid. The tax shall be calculated using the rate scale in subsection F, starting at the point on the scale that applies to the first dollar in excess of the amount of the original debt or obligation secured by the prior instrument. In the event of an open, credit line, or revolving deed of trust, the additional amount secured shall be the amount by which the original obligation secured by the supplemental instrument exceeds the maximum obligation secured by the prior instrument, regardless of the amount owed or outstanding at the time those instruments were recorded. The instrument shall certify the amount of the original debt or obligation secured, subject to the limitation set forth in subdivision A 2.

2. If the principal amount of the obligation secured by the prior instrument is increased by the supplemental instrument, the tax imposed under this section shall be paid only on the amount of the

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59 increase over the original amount secured by the prior instrument. If the bonds or other obligations  
60 secured by a prior instrument were not fully secured because they exceeded the fair market value of the  
61 property conveyed and the tax paid on the prior instrument was based upon the fair market value of the  
62 property conveyed pursuant to subdivision A 2, then the foregoing tax shall be paid on the increase, if  
63 any, in the value of such property since the recordation of the prior instrument.

64 3. The supplemental instrument, or any cover sheet submitted with the supplemental instrument, shall  
65 include the original principal amount of the bonds or other obligations secured by the prior instrument,  
66 the deed book and page number or instrument number, as applicable, of the prior instrument, and, if  
67 applicable with regard to the calculation of the tax paid on the prior instrument, any increase in the fair  
68 market value of the property conveyed.

69 E. 1. *There shall be no tax imposed on any deed of trust or mortgage, the purpose of which is to*  
70 *secure the refinancing of an existing debt, which debt is secured by a deed of trust or mortgage on*  
71 *which the tax imposed hereunder was paid within the last two years.*

72 2. On all other deeds of trust or mortgages, the purpose of which is to secure the refinancing of an  
73 existing debt, which debt is secured by a deed of trust or mortgage on which the tax imposed hereunder  
74 has been paid, the tax shall be paid on the amount of the bond or other obligation secured thereby,  
75 subject to the limitation set forth in subdivision A 2, in accordance with the following schedule:

76 On the first \$10 million of value as determined pursuant to this section, 18 cents (\$0.18) upon every  
77 \$100 or portion thereof;

78 On the next \$10 million of value as determined pursuant to this section, 16 cents (\$0.16) upon every  
79 \$100 or portion thereof;

80 On the next \$10 million of value as determined pursuant to this section, 14 cents (\$0.14) upon every  
81 \$100 or portion thereof;

82 On the next \$10 million of value as determined pursuant to this section, 12 cents (\$0.12) upon every  
83 \$100 or portion thereof; and

84 On all over \$40 million of value as determined pursuant to this section, 10 cents (\$0.10) upon every  
85 \$100 or portion thereof, incorporated into this section.

86 ~~2.~~ 3. The instrument shall certify the deed book and page number or instrument number, as  
87 applicable, of the recorded instrument on which the tax for the original debt was paid. For purposes of  
88 this subsection, the term "value" means the amount of the bond or other obligation secured by the  
89 refinancing deed of trust.

90 F. The maximum tax on the recordation of any deed of trust or mortgage or on any indenture  
91 supplemental thereto, other than instruments subject to subdivision E + 2, shall be determined in  
92 accordance with the following schedule:

93 On the first \$10 million of value as determined pursuant to this section, 25 cents (\$0.25) upon every  
94 \$100 or portion thereof;

95 On the next \$10 million of value as determined pursuant to this section, 22 cents (\$0.22) upon every  
96 \$100 or portion thereof;

97 On the next \$10 million of value as determined pursuant to this section, 19 cents (\$0.19) upon every  
98 \$100 or portion thereof;

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

101 On all over \$40 million of value as determined pursuant to this section, 13 cents (\$0.13) upon every  
102 \$100 or portion thereof, incorporated into this section.