



Virginia Local Government Law

Top 10 Take-Aways from Webinar on New Tax Assessment Appeal Legislation

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On May 12, 2011, [Sands Anderson PC](#) held a webinar for local government attorneys, assessors, Commissioners of the Revenue, Boards of Equalization and local government staff involved in the local government assessment and appeal process. The Virginia Municipal League's Mark Flynn and myself served on the panel.

The webinar was a big success! About 130 separate registrations were logged on and many of them had multiple attendees. We estimate that somewhere in the ballpark of 200 participants shared in the experience. Two hours of CLE credit have been applied for and all registrants will be contacted when approval is received from the [Virginia State Bar](#).

With apologies to [David Letterman](#), here are my Top Ten "take-aways" from the webinar:

10. The two bills in question — [HB 1588](#) and [SB 3015](#) — are the same, as adopted. So, good news! You only need to read one.

9. With full compliance with the required notices and disclosures of assessment records in Virginia Code §§ 58.1-3331, 58.1-3379 and 58.1-3984, as amended, the worst of the legislation for localities — shifting the order of presentation of evidence at the BOE and/or circuit court — is avoided.

8. Likewise, if the appeal does not involve the "assessment of residential property filed by a taxpayer as an owner of real property containing less than four residential units," the worst of the legislation for localities is avoided.

7. The disclosure requirements of Virginia Code § 58.1-3331(A), (B) and (C) are not new. However, the new requirements and deadlines for notices and production of the 58.1-3331 information in Virginia Code §§ 58.1-3379 and 58.1-3984, as amended, ARE new. Local assessing officials should make sure they comply with them all.

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6. The change to the burden of proof for all tax appeals — i.e., “preponderance of the evidence” rather than the former “clear preponderance of the evidence” — may not be that significant due to the presumption of correctness.
5. Since these bills strike the language formerly in Virginia Code § 58.1-3379 saying that there is no need to prove “manifest error” before the BOE, and return the relevant portion of the statute largely to its pre-2004 wording, a taxpayer might again have to prove “manifest error” on appeal at the BOE stage.
4. Given the similarity of the description in Virginia Code § 58.1-3984, as amended, of the taxpayer’s cause of action (i.e., WHAT needs to be proven, as contrasted with the amount of evidence), with the traditional statutory text of this statute, it is likely that proof of manifest error remains a part of taxpayer’s cause of action under Virginia Code § 58.1-3984.
3. The locality should identify who its “assessing officer” is and ensure the “assessing officer” is complying with HB 1588 and SB 3015. This is true for rural counties with a board of assessors, too.
2. In circuit court, counsel should consider addressing the timing of production of information described in Virginia Code § 58.1-3331(A), (B) and (C) in a pretrial scheduling order, and the local government attorney should ensure any notices required under Virginia Code § 58.1-3984 are sent.
1. If the order of presentation of evidence at the BOE or in circuit court is shifted because of assessor failure to provide required notices or disclosures, address this up front, but be aware that the presumption of correctness of the assessment still exists, and the burden remains on the taxpayer to prove the necessary elements to prevail.

My thanks again to Mark Flynn for participating and sharing his expertise, and to all the local government officials, attorneys and staff that joined us for the webinar!

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