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HOUSE BILL NO. 430

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 24, 2010)

(Patron Prior to Substitute—Delegate Griffith)

A *BILL to amend and reenact §§ 58.1-3258.1, 58.1-3259, 58.1-3295, 58.1-3331, 58.1-3374, and 58.1-3379 of the Code of Virginia, relating to real property tax assessment.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-3258.1, 58.1-3259, 58.1-3295, 58.1-3331, 58.1-3374, and 58.1-3379 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-3258.1. Certification of supervisors, assessors and appraisers contracted by a locality to perform assessments.

A. No supervisor, assessor or appraiser shall contract or offer to contract to perform the assessment or reassessment of real property for any locality unless he holds a valid certification issued by the Department.

B. The Department shall establish requirements for the certification of all supervisors, appraisers and personnel contracted by a locality to perform the assessment or reassessment of real property located in the locality. Such requirements shall prescribe qualifications for certification including (i) minimum education; *and training; and experience and combinations thereof, requirements, to include guidance for conducting appraisals of certain multi-unit real estate under § 58.1-3295 and guidance for following generally accepted appraisal practices;* (ii) minimum levels of experience; and ~~(ii)~~ (iii) standards of conduct. All supervisors, appraisers, and personnel employed or contracted to perform general assessments shall be required to hold a valid certification issued by the Department.

C. The Department may establish requirements for continuing education as a prerequisite to renewal of any certificate issued under this section.

§ 58.1-3259. Failure of county or city to comply with law on general reassessment of real estate.

If any county or city fails to comply with the provisions of this article requiring a general reassessment of real estate periodically in such county or city by omitting such general reassessment in the year required by this article, or by failing to comply with the provisions of § 58.1-3201 requiring assessment at 100 percent fair market value, the Department, on receiving proof of such delinquency, shall so notify the Comptroller, whereupon the Comptroller shall withhold from such county or city the payment of its share of the net profits of the operation of the alcoholic beverage control system as provided for by § 4.1-117 until such time as the provisions of § 58.1-3201 have been complied with in such county or city. Results of the Tax Department's official assessment sales ratio study showing such county or city to have a sales assessment ratio lower than 70 percent *or higher than 130 percent* for the year a general reassessment or annual assessment is effective shall be prima facie proof that such locality has failed to assess at 100 percent.

The Department shall notify the Comptroller to pay over the accumulated profits, less a penalty charge of eight percent annually, on receipt of the results of an official assessment sales ratio study showing such county or city to have a sales assessment ratio higher than ~~seventy~~ 70 percent *and less than 130 percent*.

§ 58.1-3295. Assessment of real property; affordable housing.

A. Notwithstanding any other provision of law, in determining the fair market value of real property containing more than four residential units operated in whole or in part as affordable rental housing, in accordance with the provisions of (i) 26 U.S.C. § 42, 26 U.S.C. § 142(d), 24 CFR § 983, 24 CFR § 236, 24 CFR § 241(f), 24 CFR § 221(d) (3), or any successors thereto; (ii) applicable state law; or (iii) local ordinances adopted by the locality wherein such real property is located, the duly authorized real estate assessor shall consider:

1. The *contract* rent and the impact of applicable rent restrictions;
2. The *actual* operating expenses and expenditures and the impact of any such additional expenses or expenditures; and

3. Restrictions on the transfer of title or other restraints on alienation of the real property.

The owner of real property containing more than four residential units that is operated in whole or in part as affordable rental housing in accordance with the definition of affordable rental housing established by ordinance or resolution of the locality in which the real property is located may make an application to the locality to have the real property assessed pursuant to this section. The application shall be granted by the locality if (i) the owner charges rents at levels that meet the locality's definition of affordable housing and (ii) the real property does not have any pending building code violations at the time of the application.

60 The duly authorized real estate assessor shall also consider evidence presented by the property owner
61 of other restrictions imposed by law that impact the variables set forth in this subsection.

62 B. Federal or state income tax credits with respect to affordable housing rental property within the
63 purview of subsection A shall not be considered real property or income attributable to real property.

64 C. For property where only a portion of the units are operated as affordable housing, as defined in
65 § 42 of the Internal Revenue Code or as required by state law or applicable local ordinance, only the
66 portion determined to be affordable housing shall be subject to this section.

67 *D. Notwithstanding any other provision in this section or other law, the real property governed by*
68 *this section that is generating income as affordable housing shall be assessed using the income*
69 *approach based on the property's current use, income restrictions, provisions of any arm's-length*
70 *contract including but not limited to restrictions on the transfer of title or other restraints on alienation*
71 *of the real property, the requirements of subsection B, and all other provisions of this section.*

72 § 58.1-3331. Public disclosure of certain assessment records.

73 A. All property appraisal cards or sheets within the custody of a county, city or town assessing
74 officer, except those cards or sheets containing information made confidential by § 58.1-3, shall be open
75 for inspection, after the notice of reassessment is mailed as provided in § 58.1-3330, the normal office
76 hours of such official by any taxpayer, or his duly authorized representative, desiring to review such
77 cards or sheets.

78 B. Any taxpayer, or his duly authorized representative, whose real property has been assessed for
79 taxation shall, upon request, be allowed to examine the working papers used by any such assessing
80 official in arriving at the appraised and assessed value of such person's land and any improvements
81 thereon.

82 *C. Upon request of any taxpayer or his duly authorized representative, the assessing officer of the*
83 *governing body shall make available information regarding the methodology employed in the calculation*
84 *of a property's assessed value to include the capitalization rate used to determine the property's value, a*
85 *list of comparable properties or sales figures considered in the valuation, and any other market surveys,*
86 *formulas, matrices, or other factors considered in determining the value of the property. Nothing in this*
87 *section shall be construed to require disclosure of information that is prohibited from disclosure*
88 *pursuant to §§ 58.1-3 and 58.1-3294.*

89 D. The assessing officer of the governing body may fix and promulgate a limited period within
90 normal office hours when such records shall be available for inspection and copying, but such period of
91 time may not be less than four hours per day on Monday through Friday, except on such days when the
92 office is otherwise closed.

93 *E. If, within at least five days prior to any action by a court under § 58.1-3984 or by a board of*
94 *equalization under § 58.1-3379, the assessing officer fails to disclose or make available for inspection*
95 *any information required to be disclosed or made available for inspection and copying under this*
96 *section, then the assessing official and the applicable local government shall not be allowed to introduce*
97 *such information or use it in any other manner in any such appeal.*

98 § 58.1-3374. Qualifications of members; vacancies.

99 Except as provided in § 58.1-3371 or § 58.1-3373, every board of equalization shall be composed of
100 not less than three nor more than five members. All members of every board of equalization shall be
101 residents, a majority of whom shall be freeholders, in the county or city for which they are to serve and
102 shall be selected from the citizens of the county or city. Appointments to the board of equalization shall
103 be broadly representative of the community. Thirty percent of the members of the board shall be
104 commercial or residential real estate appraisers, other real estate professionals, builders, developers, or
105 legal or financial professionals, and at least one such member shall sit in all cases involving commercial,
106 industrial or multi-family residential property, unless waived by the taxpayer. No member of the board
107 of assessors shall be eligible for appointment to the board of equalization for the same reassessment. In
108 order to be eligible for appointment, each prospective member of such board shall attend and participate
109 in the basic course of instruction given by the Department of Taxation under § 58.1-206. In addition, at
110 least once in every four years of service on a board of equalization, each member of a board of
111 equalization shall take continuing education instruction provided by the Tax Commissioner pursuant to
112 § 58.1-206. Any vacancy occurring on any board of equalization shall be filled for the unexpired term
113 by the authority making the original appointment.

114 *On any board or panel thereof considering appeals of commercial or multi-family residential*
115 *property in a locality with a population exceeding 100,000, 30 percent of the members of such board or*
116 *panel shall be commercial or multi-family residential real estate appraisers who are licensed and*
117 *certified by the Virginia Real Estate Appraiser Board to serve as general real estate appraisers, other*
118 *commercial or multi-family real estate professionals or licensed commercial or multi-family real estate*
119 *brokers, builders, developers, active members of the Virginia State Bar, or other legal or financial*
120 *professionals who have knowledge of the valuation of property, real estate transactions, building costs,*
121 *accounting, finance, or statistics. For the purposes of this section, commercial or multi-family residential*

property shall be defined as any property that is either operated as or zoned for use as commercial, industrial or multi-family residential rental property.

§ 58.1-3379. Hearing complaints and equalizing assessments.

A. The board shall hear and give consideration to such complaints and shall adjust and equalize such assessments and shall, moreover, be charged with the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment, the same be necessary to equalize and accomplish the end that the burden of taxation shall rest equally upon all citizens of such county or city.

B. In all cases brought before the board, there shall be a presumption that the valuation determined by the assessor is correct, and the board shall be advised that it is not necessary that the taxpayer show that the assessment is a result of manifest error or disregard of controlling evidence, but rather that the standard of proof is in accordance with subsection C.

C. The burden of proof shall be upon a taxpayer seeking relief to show 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 and was not arrived at in accordance with generally accepted appraisal practice practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO). Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

D. In any case before the board concerning a taxpayer's complaint in which the commissioner of the revenue or other local assessing officer requests the board to increase the assessment after the taxpayer files an appeal to the board on a commercial, multifamily residential or industrial property, the commissioner or other officer shall provide the taxpayer notice of the request not less than 14 days prior to the hearing of the board. Except as provided herein, if the taxpayer contests the requested increase, the assessor shall either withdraw the request or shall provide the board an appraisal performed by an independent contractor who is licensed and certified by the Virginia Real Estate Appraiser Board to serve as a general real estate appraiser, which appraisal affirms that such increase in value represents the property's fair market value as of the date of the assessment in dispute. The provisions of this subsection that require that the assessor provide the board with an appraisal shall not apply if (i) the requested increase is based on mistakes of fact, including computation errors, or (ii) the information on which the commissioner or other officer bases the requested increase was available to, but not provided by, the taxpayer in response to a request for information made by the commissioner or other officer at the time the challenged assessment was made.

DE. The commissioner of the revenue or other local assessing officer of such county or city shall, when requested, attend the meetings of the board, without additional compensation, and shall call the attention of the board to such inequalities in real estate assessments in his county or city as may be known to him.

EF. Every board of equalization may go upon and inspect any real estate subject to adjustment or equalization by it.

FG. The burdens and standards set out in subsections B and C shall apply in hearings before the board and nothing contained in this section shall be construed to change or have any effect upon the burdens and standards applicable to applications to correct erroneous assessments filed with circuit courts pursuant to §§ 58.1-3984 through 58.1-3987.

2. That the provisions of this act amending § 58.1-3295 of the Code of Virginia shall become effective for assessments for tax years beginning on or after January 1, 2011.

3. That the provisions of this act amending § 58.1-3374 of the Code of Virginia shall become effective for appeals relating to assessments for tax years beginning on or after January 1, 2011.

4. That the provisions of this act amending § 58.1-3379 of the Code of Virginia shall become effective for board of equalization hearings held on or after October 1, 2010.