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**HOUSE BILL NO. 1598**

Offered January 9, 2013

Prefiled January 6, 2013

*A BILL to amend and reenact §§ 58.1-3374, 58.1-3378 through 58.1-3381, and 58.1-3984 of the Code of Virginia, relating to real property tax; boards of equalization.*

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 Patron—Anderson
 

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 Referred to Committee on Finance
 

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 58.1-3374, 58.1-3378 through 58.1-3381, and 58.1-3984 of the Code of Virginia are amended and reenacted as follows:**

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

Except as provided in § 58.1-3371 or 58.1-3373, every board of equalization shall be composed of not less than three nor more than five members. In addition to such regular members, at the request of the local governing body, the circuit court for any locality shall appoint one alternate member in the case of a three-member board and two alternate members in the case of a five-member board. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any proceeding at a meeting shall notify the chairman of the board of equalization at least 24 hours prior to the meeting of such fact. The chairman may select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any proceeding in which a regular member is absent or abstains.

All members of every board of equalization, including alternate members, shall be residents, a majority of whom shall be freeholders, in the county or city for which they are to serve and shall be selected from the citizens of the county or city. Appointments to the board of equalization shall be broadly representative of the community. Thirty percent of the members of the board shall be commercial or residential real estate appraisers, other real estate professionals, builders, developers, or legal or financial professionals, and at least one such member shall sit in all cases involving commercial, industrial or multi-family residential property, unless waived by the taxpayer. No member of the board of assessors shall be eligible for appointment to the board of equalization for the same reassessment. In order to be eligible for appointment, each prospective member of such board shall attend and participate in the basic course of instruction given by the Department of Taxation under § 58.1-206. In addition, at least once in every four years of service on a board of equalization, each member of a board of equalization shall take continuing education instruction provided by the Tax Commissioner pursuant to § 58.1-206. Any vacancy occurring on any board of equalization shall be filled for the unexpired term by the authority making the original appointment.

On any board or panel thereof considering appeals of commercial or multi-family residential property in a locality with a population exceeding 100,000, 30 percent of the members of such board or panel shall be commercial or multi-family residential real estate appraisers who are licensed and certified by the Virginia Real Estate Appraiser Board to serve as general real estate appraisers, other commercial or multi-family real estate professionals or licensed commercial or multi-family real estate brokers, builders, developers, active members of the Virginia State Bar, or other legal or financial professionals ~~who have~~ *whose area of practice requires* knowledge of the valuation of property, real estate transactions, building costs, 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.

*No person who has been employed or contracted to perform general assessments for any locality in the Commonwealth within the previous four years shall be appointed as a board member.*

**§ 58.1-3378. Sittings; notices thereof.**

Each board of equalization shall sit at and for such time or times as may be necessary to discharge the duties imposed and to exercise the powers conferred by this chapter. Of each sitting public notice shall be given at least 10 days beforehand by publication in a newspaper having general circulation in the county or city and, in a county, also by posting the notice at the courthouse and at each public library, voting precinct or both. Such posting shall be done by the sheriff or his deputy. Such notice shall inform the public that the board shall sit at the place or places and on the days named therein for the purpose of equalizing real estate assessments in such county or city and for the purpose of hearing complaints of inequalities wherein the property owners allege a lack of uniformity in assessment, or

59 errors in acreage in such real estate assessments. The board also shall hear complaints that real property  
60 is assessed at more than fair market value. Except as otherwise provided by the Code of Virginia:

61 1. The fair market value of real property shall be established by the board as of January 1 of the  
62 applicable year; or

63 2. If a county or city has adopted July 1 as its tax day for real property pursuant to § 58.1-3011,  
64 then, for other than public service corporation property, the fair market value of real property shall be  
65 established by the board as of July 1 of the applicable year.

66 The governing body of any county or city may provide by ordinance the date by which applications  
67 must be made by property owners or lessees for relief. Such date shall not be earlier than 30 days after  
68 the termination of the date set by the assessing officer to hear objections to the assessments as provided  
69 in § 58.1-3330. If no applications for relief are received by such date, the board of equalization shall be  
70 deemed to have discharged its duties. Such governing body may also provide by ordinance the deadline  
71 by which all applications must be finally disposed of by the board of equalization. All such deadlines  
72 shall be clearly stated on the notice of assessment. *The governing body may provide for applications for*  
73 *relief to be made electronically; however, taxpayers retain the right to file applications on traditional*  
74 *paper forms provided by the governing body as long as such forms are submitted prior to the*  
75 *established deadline. If such paper forms are mailed by the applicant, the postmark date shall be*  
76 *considered the date of receipt by the governing body. A hearing for relief before the board of*  
77 *equalization shall not be denied on the basis of a lack of information on the application for relief, as*  
78 *long as the application includes the address, the parcel number, and the owner's proposed assessed*  
79 *value for the property.*

80 **§ 58.1-3379. Hearing complaints and equalizing assessments.**

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

86 B. In all cases brought before the board, there shall be a presumption that the valuation determined  
87 by the assessor is correct. The burden of proof on appeal to the board shall be on the taxpayer to rebut  
88 the presumption and show by a preponderance of the evidence that the property in question is valued at  
89 more than its fair market value or that the assessment is not uniform in its application and that it was  
90 not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards  
91 as prescribed by nationally recognized professional appraisal organizations such as the International  
92 Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation of property.  
93 Mistakes of fact, including computation, that affect the assessment shall be deemed not to be in  
94 accordance with generally accepted appraisal practice.

95 However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of  
96 real property containing less than four residential units, the assessing officer shall give the required  
97 written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331,  
98 and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the  
99 assessment records set out in subsections A, B, and C of § 58.1-3331 pertaining to the assessing officer's  
100 determination of fair market value of the property under appeal. The assessing officer shall provide such  
101 records within 15 days of a written request by the taxpayer or his duly authorized representative. If the  
102 assessing officer fails to do so, the assessing officer shall present the following into evidence prior to  
103 the presentation of evidence by the taxpayer at the hearing: (i) copies of the assessment records  
104 maintained by the assessing officer under § 58.1-3331, (ii) testimony that explains the methodologies  
105 employed by the assessing officer to determine the assessed value of the property, and (iii) testimony  
106 that states that the assessed value was arrived at in accordance with generally accepted appraisal  
107 practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal  
108 organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia  
109 law regarding the valuation of property. Upon the conclusion of the presentation of the evidence of the  
110 assessing officer, the taxpayer shall have the burden of proof by a preponderance of the evidence to  
111 rebut such evidence presented by the assessing officer as otherwise provided in this section.

112 C. *In considering complaints, the board shall consider all relevant data pertinent to the year of the*  
113 *valuation under review, even if such data is made available to the assessor after the effective date of*  
114 *valuation so long as such information is submitted to the board no later than the locality's deadline for*  
115 *the application for relief.*

116 D. In any case before the board concerning a taxpayer's complaint in which the commissioner of the  
117 revenue or other local assessing officer requests the board to increase the assessment after the taxpayer  
118 files an appeal to the board on a commercial, multifamily residential, or industrial property, the  
119 commissioner or other officer shall provide the taxpayer notice of the request not less than 14 days prior  
120 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.

~~D.~~ E. 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.

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

**§ 58.1-3380. Taxpayer or local authorities may apply for equalization.**

Any taxpayer or his duly appointed representative may apply to the board of equalization for the adjustment to fair market value and equalization of his assessment, including errors in acreage, and any county or city through its appointed representative or attorney may apply to the board of equalization to adjust an assessment of real property to its fair market value and to equalize the assessment of any taxpayer. *An executed and properly notarized letter designating an appointed representative for the taxpayer shall be presumed to be a valid designation from the taxpayer, and the person whose signature is notarized shall be presumed to have the authority to designate such representative on behalf of the taxpayer.*

**§ 58.1-3381. Action of board; notice required before increase made.**

A. The board shall hear and determine any and all such petitions and, by order, may increase, decrease or affirm the assessment of which complaint is made; and, by order, it may increase or decrease any assessment, upon its own motion. No assessment shall be increased until after the owner of the property has been notified and given an opportunity to show cause against such increase, ~~unless such owner has already been heard.~~ *In addition, no assessment shall be increased on commercial, multifamily residential, or industrial property unless such increase is recommended by the assessor in compliance with the provisions of § 58.1-3379.*

B. Any determination of the assessment by the board shall be deemed presumptively correct for the succeeding two years unless the assessor can demonstrate by clear and convincing evidence that a substantial change in value of the property has occurred. This subsection shall apply to the City of Virginia Beach.

**§ 58.1-3984. Application to court to correct erroneous assessments of local levies generally.**

A. Any person assessed with local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law (including, but not limited to, as provided under (i) § 15.2-717 and (ii) § 3 of Chapter 261 of the Acts of Assembly of 1936 (which was continued in effect by § 58-769 of the Code of Virginia; and now continued in effect by § 58.1-3260), as amended by Chapter 422 of the Acts of Assembly of 1950, as amended by Chapter 339 of the Acts of Assembly of 1958, and as amended by the 2003 Regular Session of the General Assembly), (a) within three years from the last day of the tax year for which any such assessment is made, (b) within one year from the date of the assessment, (c) within one year from the date of the Tax Commissioner's final determination under § 58.1-3703.1 A 5 or § 58.1-3983.1 D, or (d) within one year from the date of the final determination under § 58.1-3981, whichever is later, apply for relief to the circuit court of the county or city wherein such assessment was made. The application shall be before the court when it is filed in the clerk's office. In such proceedings, except for proceedings seeking relief from real property taxes, the burden of proof shall be upon the taxpayer to show that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and willful discrimination has been made.

All proceedings pursuant to this section shall be conducted as an action at law before the court, sitting without a jury. The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.

B. In circuit court proceedings to seek relief from real property taxes, there shall be a presumption that the valuation determined by the assessor or as adjusted by the board of equalization is correct. The burden of proof shall be on the taxpayer to ~~rebut such presumption and~~ 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

182 appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional  
183 appraisal organizations such as the International Association of Assessing Officers (IAAO) and  
184 applicable Virginia law relating to valuation of property. Mistakes of fact, including computation, that  
185 affect the assessment shall be deemed not to be in accordance with generally accepted appraisal practice.

186 However, in any appeal of the assessment of residential property filed by a taxpayer as an owner of  
187 real property containing less than four residential units, the assessing officer shall give the required  
188 written notice to the taxpayer, or his duly authorized representative, under subsection E of § 58.1-3331,  
189 and, upon written request, shall provide the taxpayer or his duly authorized representative copies of the  
190 assessment records set out in subsections A, B, and C of § 58.1-3331 pertaining to the assessing officer's  
191 determination of fair market value of the property under appeal. A written request by the taxpayer or his  
192 duly authorized representative shall be made following the filing of the appeal to circuit court and no  
193 later than 45 days prior to trial, unless otherwise provided by an order of the court before which the  
194 appeal is pending. Provided the written request is made in accordance with this section or any applicable  
195 court order, the assessing officer shall provide such records within 15 days of the written request to the  
196 taxpayer or his duly authorized representative. If the assessing officer fails to do so, the assessing officer  
197 shall present the following into evidence prior to the presentation of evidence by the taxpayer at the  
198 hearing: (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331, (ii)  
199 testimony that explains the methodologies employed by the assessing officer to determine the assessed  
200 value of the property, and (iii) testimony that states that the assessed value was arrived at in accordance  
201 with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally  
202 recognized professional appraisal organizations such as the International Association of Assessing  
203 Officers (IAAO) and applicable Virginia law relating to valuation of property. Upon the conclusion of  
204 the presentation of the evidence of the assessing officer, the taxpayer shall have the burden of proof by  
205 a preponderance of the evidence to rebut such evidence presented by the assessing officer as otherwise  
206 provided in this section.

207 C. The presumptions, burdens, and standards set out in subsection B shall not be construed to change  
208 or have any effect upon the presumptions, burdens, and standards applicable to applications for the  
209 correction of erroneous assessments of any local tax other than real property taxes.

210 D. In the event it comes or is brought to the attention of the commissioner of the revenue of the  
211 locality that the assessment of any tax is improper or is based on obvious error and should be corrected  
212 in order that the ends of justice may be served, and he is not able to correct it under § 58.1-3981, the  
213 commissioner of the revenue shall apply to the appropriate court, in the manner herein provided for  
214 relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers.