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HOUSE BILL NO. 2245

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 58.1-3295 of the Code of Virginia, relating to real property tax; assessment of affordable housing.

Patrons—Callsen, Coyner, Anthony, Askew, Bennett-Parker, Clark, Cole, Feggans, Henson, Laufer, Maldonado, Martinez, Seibold, Watts and Willett

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3295 of the Code of Virginia is amended and reenacted as follows:

§ 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 operated in whole or in part as affordable rental housing, in accordance with the provisions of (i) 12 U.S.C. § 1701q, 26 U.S.C. § 42, 26 U.S.C. § 142(d), 42 U.S.C. § 1485, 42 U.S.C. § 1437f as it applies to programs providing project-based assistance as defined in subsection (f)(6) of such section, 24 C.F.R. § 983, 24 C.F.R. § 236, 24 C.F.R. § 241(f), 24 C.F.R. § 221(d)(3), § 8 of the Housing Act of 1937, §§ 515 and 538 of the Housing Act of 1949, § 202 of the Housing Act of 1959, the federal Rental Assistance Demonstration program established under the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55), 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 use the income approach. In its use of the income approach, the assessor shall analyze:

1. The contract rent and the impact of applicable rent restrictions;

2. Restrictions on the transfer of title or other restraints on alienation of the real property; and

3. The actual operating expenses and expenditures and the impact of any such additional expenses or expenditures. If an owner has two or more units of real property that (i) are operated in whole or in part as affordable rental housing and (ii) are controlled by a single restrictive use agreement regulating income and rent restrictions, and the owner has expenses and expenditures common to two or more such units, and such expenses and expenditures cannot practicably be attributed to a particular unit, then the owner has a right to have the assessor make a pro rata apportionment of such expenses and expenditures to each such unit based on each unit's assessed value as a percentage of the total assessed value of all such units. The provisions of this subdivision apply whether or not the units are in one tax parcel or multiple tax parcels.

B. The owner of real property 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. Notwithstanding the exception in § 58.1-3294 for an owner of four or fewer residential units, upon application by such an owner, the duly authorized real estate assessor may require the owner to furnish to such assessor, board, or department statements of the income and expenses attributable over a specified period of time to each such parcel of real estate in the manner required by § 58.1-3294 and to comply with all provisions of § 58.1-3294 applicable to properties with more than four rental dwelling units. 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.

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

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

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

E. Notwithstanding any other provision in this section or other law, the real property governed by this section that is generating income as affordable housing shall be assessed using the income approach as set forth in subsection A based on: the property's current use, income restrictions, provisions of any arm's-length contract including but not limited to restrictions on the transfer of title or other restraints on alienation of the real property, operating expense and capitalization rate data from comparable affordable housing, the requirements of subsection B, and all other provisions of this section. If an affordable housing property was sold during the most recent taxable year, the assessor shall use the income and expense information supplied

58 *by the prior owner in combination with the information supplied by the current owner to assess the building.*

59 *F. If the duly authorized real estate assessor fails to comply with this section and an owner of property*  
60 *subsequently prevails in an appeal of an assessment performed by such assessor to a board of review, board*  
61 *of equalization, or any court of competent jurisdiction, the locality for whom such assessment was performed*  
62 *shall reimburse such owner for reasonable attorney fees and costs incurred in bringing and prosecuting the*  
63 *appeal. However, the locality shall not be required to reimburse such owner as provided in this subsection if*  
64 *such owner has failed to comply with the requirements in § 58.1-3294.*

65 **2. That the Department of Taxation shall develop, in consultation with a stakeholder group, a short**  
66 **form that may be provided by duly authorized assessors and completed by the owners of affordable**  
67 **rental housing properties to satisfy such owners' compliance with § 58.1-3294 of the Code of Virginia in**  
68 **regard to the statement of income and expenses required pursuant to such section. The form shall only**  
69 **require inclusion of the owner's name and personal home address, the location and description of the**  
70 **property upon which affordable housing is provided by such owner, the current rental rate of any**  
71 **dwelling upon such property, any tenant concessions, the gross annual rental income and any other**  
72 **revenues incidental thereto for such property, the vacancy rate of any dwelling units upon such**  
73 **property, the current collection loss rate, any annual reserve for replacements, and the annual**  
74 **operating expenses for such property. The form shall be completed no later than September 1, 2025.**

75 **3. That the provisions of the first enactment this act shall become effective for assessments beginning**  
76 **on or after July 1, 2026.**