

HOUSE BILL NO. 1446

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on January 30, 2024)

(Patron Prior to Substitute--Delegate Coyner)

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

**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. For purposes of this section:

"Income and expense statements" means profit and loss statements and rent rolls.

"Normal course of business" means any operation or action that represents a daily and common action, carried out on a reasonable and professional basis, in conformity with the actions of other appraisers who have expertise and competency in a similar type of assignment and by the expectations of parties who are regularly intended users for similar assignments.

"Owner" means the owner of record of the real property and the owner's agent, except that for purposes of subdivision B 6, "owner" means the owner of record of the real property and any person assessed with local taxes who is aggrieved by the assessments in issue.

"Prompt" means within 10 business days.

"Short-term lease" means a rental lease agreement of two years or less.

B. 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) 26 U.S.C. § 42, 26 U.S.C. § 142(d), 24 C.F.R. § 983, 24 C.F.R. § 236, 24 C.F.R. § 241(f), 24 C.F.R. § 221(d)(3), 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

27 law; or (iii) local ordinances adopted by the locality wherein such real property is located, the duly  
28 authorized real estate assessor ~~shall consider:~~

- 29 ~~1. The contract rent and the impact of applicable rent restrictions;~~
- 30 ~~2. Restrictions on the transfer of title or other restraints on alienation of the real property; and~~
- 31 ~~3. The actual operating expenses and expenditures and the impact of any such additional expenses~~  
32 ~~or expenditures. If an owner has two or more units of real property that (i) are operated in whole or in part~~  
33 ~~as affordable rental housing and (ii) are controlled by a single restrictive use agreement regulating income~~  
34 ~~and rent restrictions, and the owner has expenses and expenditures common to two or more such units,~~  
35 ~~and such expenses and expenditures cannot practicably be attributed to a particular unit, then the owner~~  
36 ~~has a right to have the assessor make a pro rata apportionment of such expenses and expenditures to each~~  
37 ~~such unit based on each unit's assessed value as a percentage of the total assessed value of all such units.~~  
38 ~~The provisions of this subdivision apply whether or not the units are in one tax parcel or multiple tax~~  
39 ~~parcels shall only use the income approach as provided herein.~~

40 1. The duly authorized real estate assessor shall first determine whether the property to be assessed  
41 is encumbered by short-term leases at rents that are reflective of market conditions. If the property is so  
42 encumbered, the duly authorized real estate assessor shall use the direct capitalization technique to arrive  
43 at the property's assessment. If the property is encumbered by leases with contract rents that differ from  
44 market rents, the duly authorized real estate assessor may use the yield capitalization technique to arrive  
45 at the property's assessment.

46 2. In using the income approach to arrive at assessments of affordable rental housing properties,  
47 the duly authorized real estate assessor shall:

- 48 a. Collect, verify, and analyze (i) such rental data of comparable affordable rental housing  
49 properties as is available to the duly authorized real estate assessor in the normal course of business and  
50 (ii) the potential earnings capacity of the real property as is necessary and appropriate to estimate the gross  
51 income potential of the real property. Federal or state income tax credits with respect to affordable housing  
52 rental property shall not be considered real property or income attributable to the real property;

53 b. Collect, verify, and analyze (i) such operating expense data of comparable affordable rental  
54 housing properties as is available to the duly authorized real estate assessor in the normal course of  
55 business and (ii) the actual operating expense data for the real property as is necessary and appropriate to  
56 estimate the operating expenses of the real property;

57 c. Base projections of future income potential and operating expenses for the real property on  
58 reasonably clear and appropriate evidence;

59 d. Weigh historical information and trends, current supply and demand factors, and anticipated  
60 events such as competition from developments under construction when developing or reconstructing  
61 income and expense statements and cash flow projections for the real property;

62 e. Collect, verify, and analyze occupancy rates for comparable affordable rental housing properties  
63 as are available to the duly authorized real estate assessor in the normal course of business and as are  
64 necessary and appropriate to estimate the stabilized occupancy of the real property;

65 f. Collect, verify, and analyze replacement reserves for comparable affordable rental housing  
66 properties as are available to the duly authorized real estate assessor in the normal course of business and  
67 as are necessary and appropriate to estimate the costs to repair or replace buildings or other improvement  
68 components to meet governing regulatory requirements;

69 g. Collect, verify, and analyze such data as is available to the duly authorized real estate assessor  
70 in the normal course of business and as is necessary and appropriate to estimate rates of capitalization or  
71 rates of discount for use in an income approach to assess the real property. In collecting, verifying, and  
72 analyzing such data, the duly authorized real estate assessor shall analyze and account for the influence of  
73 the real property's locational characteristics, condition, occupancy, rate of cash flow, and related factors  
74 on the fair market value of the real property. In estimating rates of capitalization, the duly authorized real  
75 estate assessor shall give preference to the use of the band of investment technique. To the extent the duly  
76 authorized real estate assessor collects, verifies, and analyzes capitalization rates extracted from market  
77 sales transactions, the properties that are the subject of the sale transactions shall be highly comparable to  
78 the real property, including comparability of property type, remaining economic life, operating expense  
79 ratios, physical condition, ratios of land-to-improvements as proportions of total property value, income

80 streams with the same characteristics of risk, timing, stability, and income projection pattern, terms of  
81 sale, types of financing, types of buyers, including those with motivations the same as the most probable  
82 type of buyer for the subject property, and market conditions at the time of sale and time of assessment.  
83 The use of national or regional surveys of capitalization rates of sales of conventional market-rate  
84 properties and the use of capitalization rates extracted from sales of conventional market-rate properties  
85 to value affordable rental housing properties is prohibited. The use of capitalization rates extracted from  
86 sales of affordable rental housing properties in urban or metropolitan areas to value affordable rental  
87 housing properties in rural areas is prohibited; and

88 h. Notwithstanding any other provision of this section, the duly authorized real estate assessor shall  
89 collect, verify, and analyze other potential influences on the fair market value of the real property,  
90 including the real property's current use, the real property's income restrictions, preservation agreements  
91 governing or applicable to the real property, physical needs assessments and inspections of the real  
92 property by regulatory agencies, and restrictions on the transfer of title to the real property or other  
93 restraints on alienation of the real property.

94 3. Use of mass appraisal techniques to assess the fair market value of affordable rental housing  
95 properties is prohibited for those affordable rental housing properties whose owners provide income and  
96 expense statements attributable to such properties within the timeframe requested by the duly authorized  
97 real estate assessor pursuant to § 58.1-3294. A duly authorized real estate assessor's request for income  
98 and expense statements under this section shall be limited to such information for the time periods that  
99 are necessary and appropriate to the performance of an income approach in accordance with generally  
100 accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized  
101 professional appraisal organizations and Virginia law relating to the valuation of real property.

102 4. Boards of equalization and boards of review hearing appeals of assessments of affordable rental  
103 housing properties shall arrive at the assessments of real property operated in whole or in part as affordable  
104 rental housing in accordance with the provisions of this section.

105 B-5. The owner of real property that is operated in whole or in part as affordable rental housing in  
106 accordance with the definition of affordable rental housing established by ordinance or resolution of the

107 locality in which the real property is located may make an application to the locality duly authorized real  
108 estate assessor to have the real property assessed pursuant to this section. ~~Notwithstanding the exception~~  
109 ~~in § 58.1-3294 for an owner of four or fewer residential units, upon~~ Upon application by such an owner,  
110 the duly authorized real estate assessor may require the owner to ~~furnish to such assessor, board, or~~  
111 ~~department statements of the income and expenses attributable over a specified period of time to each~~  
112 ~~such parcel of real estate in the manner required by § 58.1-3294 and to comply with all provisions of §~~  
113 ~~58.1-3294 applicable to properties with more than four rental dwelling units~~ provide income and expense  
114 statements for the duly authorized real estate assessor's use in arriving at the assessment of the real  
115 property. A duly authorized real estate assessor's request for income and expense statements under this  
116 subsection shall be limited to such information for the time periods that are necessary and appropriate to  
117 the performance of an income approach in accordance with generally accepted appraisal practices,  
118 procedures, rules, and standards as prescribed by nationally recognized professional appraisal  
119 organizations and Virginia law relating to the valuation of real property. The application shall be granted  
120 by the locality duly authorized real estate assessor if (i) the owner charges rents at levels that meet the  
121 locality's definition of affordable housing and (ii) the real property does not have any pending building  
122 code violations at the time of the application.

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

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

127 ~~D. For property where only a portion of the units are operated as affordable housing, as defined in~~  
128 ~~§ 42 of the Internal Revenue Code or as required by state law or applicable local ordinance, only the~~  
129 ~~portion determined to be affordable housing shall be subject to this section.~~

130 ~~E. Notwithstanding any other provision in this section or other law, the real property governed by~~  
131 ~~this section that is generating income as affordable housing shall be assessed using the income approach~~  
132 ~~based on: the property's current use, income restrictions, provisions of any arm's length contract including~~

133 ~~but not limited to restrictions on the transfer of title or other restraints on alienation of the real property,~~  
134 ~~the requirements of subsection B, and all other provisions of this section.~~

135 6. a. The duly authorized real estate assessor shall understand the various affordable rental housing  
136 subsidy programs, affordable rental housing definitions, the various restrictions, risks, and benefits  
137 associated with ownership of affordable rental housing properties, relevant tax considerations related to  
138 affordable housing, local market conditions affecting affordable rental housing properties, and anticipated  
139 changes in the market for affordable rental housing properties that may affect the quality, quantity, or  
140 durability of the various restrictions, risks, and benefits associated with ownership of affordable rental  
141 housing properties.

142 b. The duly authorized real estate assessor shall maintain and provide the owner or its agent of  
143 affordable rental housing with prompt access to all the materials collected, verified, or analyzed in arriving  
144 at the owners' assessments. If the duly authorized real estate assessor fails or refuses to provide the owner  
145 or its agent with prompt access to all the materials collected, verified, or analyzed in arriving at the  
146 assessment of the real property, the locality will be prohibited from using any of the materials that may  
147 have been collected, verified, or analyzed in defending an assessment against a property owner's  
148 assessment appeal.

149 c. If the duly authorized real estate assessor fails or refuses to make appropriate efforts in  
150 accordance with generally accepted appraisal practices, procedures, rules, and standards prescribed by  
151 nationally recognized professional appraisal organizations to obtain the materials necessary to arrive at  
152 assessments of affordable rental housing properties in accordance with the provisions of this section, (i)  
153 the resulting assessment will not be entitled to a presumption of correctness, and upon appeal of the  
154 affected assessment to a board of review, board of equalization, or circuit court, the property owner will  
155 only need to prove that the assessment is in excess of the real property's fair market value or that the  
156 assessment is not uniform in its application in order to prevail in the appeal and (ii) if the owner prevails  
157 in its appeal to a board of review, board of equalization, or circuit court, the locality shall reimburse the  
158 owner for its reasonable attorney fees and costs incurred in bringing and prosecuting the appeal.

