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HOUSE BILL NO. 1096

Offered January 10, 2024

Prefiled January 10, 2024

A *BILL to amend and reenact § 58.1-439.30 of the Code of Virginia, relating to housing opportunity tax credit.*

Patron—Thomas

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-439.30 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-439.30. Virginia housing opportunity tax credit.

A. Subject to the provisions of subsection H, a housing opportunity tax credit shall be allowed for each qualified project for each year of the credit period, in an amount up to the amount of federal low-income housing tax credit allocated or allowed by the Authority to such qualified project. The credit shall be allowed ratably for each qualified project, with one-tenth of the credit amount allowed annually for 10 years over the credit period, except that there shall be a reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2) and any reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable year of the credit period shall be allowable for the first taxable year following the credit period.

B. 1. For taxable years beginning on and after January 1, 2021, but before January 1, 2026, a qualified taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to reduction by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated by pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to by such persons, regardless of whether or not any such person is allocated or allowed any portion of any federal low-income housing tax credit with respect to the qualified project, whether or not the allocation of the housing opportunity tax credit under the terms of the agreement has substantial economic effect within the meaning of § 704(b) of the Internal Revenue Code, and whether any such person is deemed a partner for federal income tax purposes as long as the partner or member would be considered a partner or member as defined under applicable state law, and has been admitted as a partner or member on or prior to the date for filing the qualified taxpayer's tax return, including any amendments thereto, with respect to the year of the housing opportunity tax credit. Such pass-through entities or qualified taxpayer may assign all or any part of its interest, including its interest in the tax credits, to one or more pass-through entities or qualified taxpayers, and the qualified taxpayer shall be able to claim the housing opportunity tax credit so long as its interest is acquired prior to the filing of its tax return claiming the housing opportunity tax credit.

2. If a housing opportunity tax credit has been awarded according to the terms of subsection G prior to January 1, 2026, such credit may continue to be claimed on a return for taxable years on and after January 1, 2026, but only pursuant to the applicable credit period specified in § 58.1-439.29.

C. The housing opportunity tax credit authorized by this article shall not be refundable. Any housing opportunity tax credit not used in a taxable year may be carried forward by a qualified taxpayer for the succeeding five years.

D. A qualified taxpayer claiming a housing opportunity tax credit shall submit a copy of the eligibility certificate at the time of filing its tax return with the Department. If the owner of the qualified project has applied to the Authority for the eligibility certificate but the Authority has not yet issued the eligibility certificate at the time the qualified taxpayer files its original tax return claiming the housing opportunity tax credit, the taxpayer may claim the housing opportunity tax credit based upon the amount of tax credit set forth in the award letter issued by the Authority for the housing opportunity tax credit issued to the qualified project and shall amend its tax return to include the eligibility certificate upon its receipt. If the amount of tax credit in the eligibility certificate is different than the amount of tax credit previously claimed, the taxpayer shall adjust the tax credit amount claimed on the amended tax return.

E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income housing credits taken on a qualified project is required to be recaptured or is otherwise disallowed during the credit period, the taxpayer claiming housing opportunity tax credits with respect to such project shall also be required to recapture a portion of any tax credits authorized by this article. The percentage of housing opportunity tax credits subject to recapture shall be equal to the percentage of federal low-income housing credits subject to recapture or otherwise disallowed during such period. Any tax credits recaptured or disallowed shall increase the income tax liability of the qualified taxpayer who claimed the tax credits in a like amount and shall be included on the tax return of the qualified taxpayer submitted for the taxable year in

59 which the recapture or disallowance event is identified. The balance of any tax credits recaptured or
60 disallowed shall be allocated by the Authority for any qualified project in accordance with subsection G.

61 F. The Authority shall administer the housing opportunity tax credit program and shall be authorized to
62 promulgate the regulations and guidelines necessary to implement and administer this article. Such
63 regulations and guidelines may include the imposition of application, allocation, certification, and monitoring
64 fees designed to recoup the costs of the Authority in administering the housing opportunity tax credit
65 program.

66 G. 1. Any housing opportunity tax credit amounts authorized in a calendar year that are subsequently (i)
67 canceled and returned to the Authority or (ii) recaptured or disallowed pursuant to subsection E may be
68 awarded in the following calendar year, but no later than December 31, 2025. If the amount of housing
69 opportunity tax credits authorized in a calendar year for qualified projects is less than the total amount of
70 credits available for qualified projects under subdivision H 2, the balance of such credits, in an amount not
71 greater than 15 percent of the amount of credits available for qualified projects under subdivision H 2, (a)
72 shall be allocated by the Authority for any qualified project in the following calendar year, (b) shall not be
73 allocated at any time after such following calendar year, and (c) shall be allocated no later than December 31,
74 2025.

75 2. Such housing opportunity tax credits issued pursuant to this subsection shall be allowed ratably, with
76 one-tenth of the total amount of credits allowed annually for 10 years over the credit period, except that there
77 shall be a reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26
78 U.S.C. § 42(f)(2) and any reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first
79 taxable year of the credit period shall be allowable for the first taxable year following the credit period.

80 H. 1. The total amount of housing opportunity tax credits authorized for qualified projects under this
81 article shall not exceed \$15 million for calendar year 2021.

82 2. For calendar years 2022 through 2025, the total amount of housing opportunity tax credits authorized
83 for qualified projects under this article shall not exceed (i) *for calendar year 2022*, \$60 million and (ii) *for*
84 *calendar years 2023 through 2025*, \$100 million per calendar year. Such credits issued each calendar year
85 shall be allowed ratably, with one-tenth of the total amount of credits allowed annually for 10 years over the
86 credit period, except that there shall be a reduction in the tax credit allowable in the first year of the credit
87 period due to the calculation in 26 U.S.C. § 42(f)(2) and any reduction by reason of 26 U.S.C. § 42(f)(2) in
88 the credit allowable for the first taxable year of the credit period shall be allowable for the first taxable year
89 following the credit period.

90 3. Notwithstanding any other provision of law to the contrary, the aggregate amount of housing
91 opportunity tax credits authorized for all qualified projects under this article shall not exceed ~~\$255~~ \$375
92 million across all calendar years.

93 I. Notwithstanding any provision of law or regulation to the contrary, only Virginia housing opportunity
94 tax credits awarded in calendar year 2021, up to a maximum of \$15 million total for all taxpayers in all
95 taxable years, may be claimed pursuant to the provisions of this section as set forth in Chapter 495 of the Acts
96 of Assembly of 2021, Special Session I, prior to its amendment by the ninth enactment of Chapter 2 of the
97 Acts of Assembly of 2022, Special Session I.

98 J. The Authority shall, upon request from the Chairs of the House Committee on Appropriations, the
99 House Committee on Finance, and the Senate Committee on Finance and Appropriations, provide
100 information, data, and any other requested advisement on the potential structure and cost of a separately
101 authorized certificated Virginia housing opportunity tax credit program that would allow a qualified project
102 to sell all or any portion of its Virginia housing opportunity tax credits, to one or more unrelated taxpayers
103 based on findings in the report of the Department of Housing and Community Development and the
104 Authority stakeholder advisory group submitted pursuant to Chapter 517 of the Acts of Assembly of 2020.

105 K. Of the ~~\$60 million total amount~~ of Virginia housing opportunity tax credits authorized per calendar
106 year from 2022 through 2025 for qualified projects by the Authority pursuant to this article, \$20 million of
107 such credits shall be first allocated exclusively for qualified projects located in a locality with a population no
108 greater than 35,000 as determined by the most recent United States census. Such allocation of Virginia
109 housing opportunity tax credits shall constitute the minimum amount of such tax credits to be allocated for
110 qualified projects in such localities. However, if the amount of such tax credits requested for qualified
111 projects in such localities is less than the total amount of such credits available for qualified projects in such
112 localities, the balance of such credits shall be allocated for any qualified project, regardless of location. In
113 allocating or allowing such credits to qualified projects in such localities, the Authority shall give equal
114 consideration to qualified projects allocated or allowed a federal low-income housing credit in an amount
115 equal to the 10-year present value calculation of the percentages prescribed under 26 U.S.C. §§ 42(b)(1)(B)(i)
116 and 42(b)(1)(B)(ii).