25102691D

HOUSE BILL NO. 2048

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 36-142 and 58.1-439.30 of the Code of Virginia and to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to Virginia Housing Trust Fund; Virginia housing opportunity tax credit; community investment tax credit.

Patrons—Anthony, Gardner, Jones, Keys-Gamarra and LeVere Bolling

---

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-142 and 58.1-439.30 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13 as follows:

§ 36-142. Creation and management of Fund.

A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be known as the "Virginia Housing Trust Fund." The Fund shall be established on the books of the Comptroller and consist of sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to housing sponsors and persons and families of low and moderate income, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private. The Fund shall also consist of such other sums as may be made available to it and shall include federal grants solicited and received for the specific purposes of the Fund and all interest and income from investment of the Fund. Any sums remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All moneys designated for the Fund shall be paid into the state treasury and credited to the Fund.

B. The Department shall:

1. Work in collaboration with the HDA to provide loan origination and servicing activities as needed to carry out the purposes of the Fund. The costs of such services shall be considered an eligible use of the Fund; ~~and~~

2. Use, through HDA, at least 80 percent of the moneys from the Fund to provide flexible financing for low-interest loans through eligible organizations. Such loans shall be structured to maximize leveraging opportunities. All such funds shall be repaid to the credit of the Fund. Loans may be provided for (i) affordable rental housing to include new construction, rehabilitation, repair, or acquisition of housing to assist low or moderate income citizens, including land and land improvements; (ii) down payment and closing cost assistance for homebuyers; and (iii) short-term, medium-term, and long-term loans to reduce the cost of homeownership and rental housing. Moneys required by the HDA to fund such loans and perform loan closing and disbursement services shall be transferred from the Fund to the HDA*; and*

3. Conduct an annual geographic equity assessment that identifies distressed localities that have historically received less investment for housing and economic development. Such assessment shall identify localities in the Commonwealth that are experiencing a severe housing shortage, as determined by the Department.

The Department may use up to 20 percent of the moneys from the Fund to provide grants through eligible organizations for targeted efforts to reduce homelessness, including (a) temporary rental assistance, not to exceed one year; (b) housing stabilization services in permanent supportive housing for homeless individuals and homeless families; (c) mortgage foreclosure counseling targeted at localities with the highest incidence of foreclosure activity; and (d) predevelopment assistance for permanent supportive housing and other long-term housing options for the homeless.

The Department shall allocate no more than 30 percent of the moneys from the Fund to a single locality unless such locality has been identified by the Department as undergoing a severe housing shortage by a geographic equity assessment conducted pursuant to this section. The Department shall allocate a minimum of 20 percent of the moneys from the Fund annually to localities that do not qualify as an urban area as identified in the most recent United States Census.

C. The Fund shall be administered and managed by the Department as prescribed in this chapter. In order to carry out the administration and management of the Fund, the Department is granted the power to contract with or employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, public accountants, engineers and other technical advisers and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Department may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund, including reasonable fees and costs of the HDA.

D. For the purposes of this section, eligible organizations include (i) localities, (ii) local government housing authorities, (iii) regional and statewide housing assistance organizations that provide assistance to low and moderate income or low income citizens of Virginia, and (iv) limited liability companies expressly created for the purpose of owning and operating affordable housing.

E. In any year prior to the expenditure of any general funds appropriated for the Fund for the next succeeding fiscal year, the Department, in conjunction with HDA, shall submit a plan outlining the proposed uses of such funds to the General Assembly. The plan shall be provided to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations no later than November 1 of each year.

§ 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~~ *2031*, 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~~ *2030*, such credit may continue to be claimed on a return for taxable years on and after January 1, ~~2026~~ *2030*, 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 which the recapture or disallowance event is identified. The balance of any tax credits recaptured or disallowed shall be allocated by the Authority for any qualified project in accordance with subsection G.

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

G. 1. Any housing opportunity tax credit amounts authorized in a calendar year that are subsequently (i) canceled and returned to the Authority or (ii) recaptured or disallowed pursuant to subsection E may be awarded in the following calendar year, but no later than December 31, ~~2025~~ *2030*. If the amount of housing opportunity tax credits authorized in a calendar year for qualified projects is less than the total amount of credits available for qualified projects under subdivision H 2, the balance of such credits, in an amount not greater than 15 percent of the amount of credits available for qualified projects under subdivision H 2, (a) shall be allocated by the Authority for any qualified project in the following calendar year, (b) shall not be allocated at any time after such following calendar year, and (c) shall be allocated no later than December 31, ~~2025~~ *2030*.

2. Such housing opportunity tax credits issued pursuant to this subsection shall be allowed ratably, with one-tenth of the total amount of credits 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.

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

2. For calendar years 2022 through ~~2025~~ *2030*, the total amount of housing opportunity tax credits authorized for qualified projects under this article shall not exceed $60 million per calendar year. Such credits issued each calendar year shall be allowed ratably, with one-tenth of the total amount of credits 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.

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

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

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

K. Of the $60 million of Virginia housing opportunity tax credits authorized per calendar year from 2022 through ~~2025~~ *2030* for qualified projects by the Authority pursuant to this article, *(i)* $20 million of such credits shall be first allocated exclusively for qualified projects located in a locality with a population no greater than 35,000 as determined by the most recent United States census *and (ii) $12 million of such credits shall be allocated exclusively for qualified projects located in a locality identified as distressed by a geographic equity assessment conducted by the Department of Housing and Community Development pursuant to § 36-142. No more than $18 million of such credits shall be allocated to qualified projects located in the same locality unless such locality is identified as experiencing a severe housing shortage by a geographic equity assessment conducted by the Department of Housing and Community Development pursuant to § 36-142*. Such allocation of Virginia housing opportunity tax credits shall constitute the minimum amount of such tax credits to be allocated for qualified projects in such localities. However, if the amount of such tax credits requested for qualified projects in such localities is less than the total amount of such credits available for qualified projects in such localities, the balance of such credits shall be allocated for any qualified project, regardless of location. In allocating or allowing such credits to qualified projects in such localities, the Authority shall give equal consideration to qualified projects allocated or allowed a federal low-income housing credit in an amount equal to the 10-year present value calculation of the percentages prescribed under 26 U.S.C. §§ 42(b)(1)(B)(i) and 42(b)(1)(B)(ii).

§ 58.1-439.12:13. Community investment tax credit.

A. As used in this section,"eligible project" means the development of affordable housing or a mixed use *development, as those terms are defined by § 15.2-2201, by a private developer or an organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code. Such project must be located within a locality identified as distressed by a geographic equity assessment conducted by the Department of Housing and Community Development pursuant to § 36-142.*

B. For taxable years beginning on January 1, 2025, but before January 1, 2030, a taxpayer shall be allowed a nonrefundable credit against the tax levied pursuant to § 58.1-320 or 58.1-400 for amounts invested in an eligible project. The amount of the credit shall be no more than 10 percent of the total investment amount, up to $500,000, per taxpayer per taxable year.

C. The amount of the credit claimed shall not exceed the total amount of tax imposed by this chapter upon the taxpayer for the taxable year. Any credit not usable for the taxable year for which the credit was first allowed may be carried over for credit against the income taxes of the person in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

D. Credits granted to a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, in proportion to their ownership or interest in such business entities.

E. The Tax Commissioner shall develop guidelines implementing the provisions of this section. The guidelines shall include procedures for the allocation of tax credits among participating taxpayers. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).