DEPARTMENT OF TAXATION
2025 Fiscal Impact Statement

1. **Patron** David L. Bulova

2. **Bill Number** HB 1701
House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. **Committee** House Finance

4. **Title** Income Tax: Enhancement of the Virginia Housing Opportunity Tax Credit

5. **Summary/Purpose:**

This bill would extend the sunset date for the Virginia Housing Opportunity Tax Credit ("HOTC") from January 1, 2026 to January 1 2031, and the annual credit roll-over deadline from December 31, 2025 to December 31, 2030.For Calendar Years 2026 through 2030, this bill would increase the annual cap on the HOTC by $190 million per year from $60 million to $250 million per year. This bill would also make a corresponding increase in the multi-year cap on the HOTC of $1.25 billion from $255 million to $1.505 billion. The multi-year cap does not apply per calendar year but instead across all calendar years for which the HOTC is effective.

The bill would also require that 33 percent of the tax credits issued each year be reserved for qualified projects located in a geographic area within the "Balance of State Pool." The Balance of State Pool is the remaining geographic area of Virginia after the Northern Virginia, Northwest/North Central Virginia, Richmond MSA, and Tidewater MSA geographic areas are excluded.

The provisions of this bill increasing the per year credit cap would be effective for calendar years 2026 through 2030. If enacted during the regular session of the 2025 General Assembly, the remaining provisions of this bill would become effective July 1, 2025.

6. **Budget amendment necessary:** Yes.
Item(s): Page 1, Revenue Estimates

7. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

7b. Revenue Impact:

Fiscal Year	*Dollars*	*Fund*
2027-28	($25 million)	GF
2028-29	($50 million)	GF
2029-30	($75 million)	GF
2030-31	($100 million)	GF

8. Fiscal implications:

Administrative Costs

The Department of Taxation ("the Department") considers implementation of this bill as routine and does not require additional funding.

Virginia Housing Development Authority ("VHDA") is allowed under the Virginia Housing Opportunity Tax Credit Act to charge an administrative fee to developers awarded the credits, and that administrative fee offsets their costs. In addition, VHDA is self-supporting and does not receive state appropriations.

Revenue Impact

This bill would result in an estimated negative General Fund revenue impact as shown on Line 7b. Since the HOTC program is currently oversubscribed, this estimate assumes that the maximum amount of credits will be issued each year. The revenue impact of this bill is delayed until FY 2028, due to the timing of when Calendar Year 2026 HOTCs are claimed on income tax returns.

Because taxpayers claim one-tenth of the credit each year for ten years, the full revenue impact of this bill would not occur until FY 2032, as shown below.

Senate Bill 828 Annual Revenue Impact (in millions)									
2028	2029	2030	2031	2032	2033	2034	2035	2036	2037
($25)	($50)	($75)	($100)	($125)	($125)	($125)	($125)	($125)	($125)

If this bill's January 1, 2031 sunset date were subsequently extended by the General Assembly, the full revenue impact of this bill would not occur until FY 2037, as shown below:

Senate Bill 828 Annual Revenue Impact (in millions) if Subsequent Extension Assumed									
2028	2029	2030	2031	2032	2033	2034	2035	2036	2037 & After
($25)	($50)	($75)	($100)	($125)	($150)	($175)	($200)	($225)	($250)

9. Specific agency or political subdivisions affected:

Department of Taxation
Virginia Housing Development Authority

10. Technical amendment necessary: No.

11. Other comments:

Federal Low-Income Housing Tax Credit

The federal low-income housing tax credit ("LIHTC") is a nonrefundable income tax credit that was created by the Tax Reform Act of 1986 to provide an incentive for the development and rehabilitation of affordable rental housing. LIHTCs are awarded to developers of qualified rental projects via a competitive application process administered by state housing finance authorities. Typically, developers will effectively "sell" their tax credits to outside investors by entering into limited partnerships or limited liability companies with investors, with 99.99 percent of the profits, losses, depreciation, and tax credits being allocated to the investors as a partner in the partnership or member in the limited liability company. This reduces the debt developers would otherwise have to incur and the equity they would otherwise have to contribute. With lower financing costs, tax credit properties can potentially offer lower, more affordable rents.

Two types of LIHTCs are available depending on the nature of the construction project. The so-called 9 percent credit is generally reserved for new construction, while the so-called 4 percent credit is typically used for rehabilitation projects and new construction that is financed with tax-exempt bonds. Each year, for ten years, a tax credit equal to roughly 4 percent or 9 percent of a project's qualified basis (cost of construction) is claimed. The applicable credit rates have historically not actually been 4 percent and 9 percent. Instead, the credit rates have fluctuated in response to market interest movements so that the program has delivered a subsidy equal to 30 percent of the present value of a project's qualified basis in the case of the 4 percent credit, and 70 percent in the case of the 9 percent credit. For both the 4 percent and 9 percent credit it is the subsidy levels (30 percent or 70 percent) that are explicitly specified under federal tax law, not the credit rates. Since 1986, the 4 percent rate has ranged between 3.15 percent and 3.97 percent, and the 9 percent credit between 7.35 percent and 9.27 percent. Since 2008, however, there has been a floor under the 9 percent credit below which the new construction credit rate cannot fall.

The process of allocating, awarding, and then claiming the LIHTC is complex and lengthy. The process begins at the federal level with each state receiving an annual LIHTC allocation in accordance with federal law. State housing agencies then allocate credits to developers of rental housing according to federally required, but state created, allocation plans. The process typically ends with developers effectively selling allocated credits to outside investors in exchange for equity.

Taskforce and Report to Study Establishment of Virginia LIHTC

During the 2020 General Assembly Session, House Bill 810 was enacted, which required the Department of Housing and Community Development ("DHCD") and the VHDA to convene a stakeholder advisory group ("Task Force") to:

- Determine the most effective and efficient way to administer a Virginia housing opportunity tax credit program,
- Develop draft legislation establishing such an affordable housing credit program, and
- Conduct financial modeling to determine the fiscal impact of such a program to Virginia.

Such legislation also required the Task Force to report its recommendations to the Governor, the Secretary of Commerce and Trade, the Director of the DHCD, and the commissioners of the VHDA by September 1, 2020. Such report, *the Report of the Virginia Housing Opportunity Tax Credit Task Force*, was published in September 2020.

Current Law

Under current law, taxpayers are eligible to claim this credit if they own or are invested in a building used to provide low-income housing. A building qualifies if:

- It was put into service in Virginia on or after January 1, 2021.
- It meets the definition of low-income building provided in §42(c) of the Internal Revenue Code.

This credit equals the amount of the federal low-income housing tax credit VHDA permits for the project.

This credit is subject to an annual cap equal to $60 million per calendar year. Credits issued each calendar year from Calendar Year 2022 through Calendar Year 2025 are not permitted to be claimed immediately. Credits issued each calendar year are allowed ratably, with one-tenth of the total amount of the credits allowed annually for 10 years over the credit period. There is a reduction in the tax credit allowable in the first year of the credit period due to a federal law calculation, and any reduction by reason of such federal law calculation in the credit allowable for the first taxable year of the credit period is allowable for the first taxable year following the credit period.

If the amount of HOTC issued by VHDA in a calendar year is less than the $60 million annual cap, the balance of such credits, in an amount not greater than 15 percent:

- May be allocated by VHDA for any qualified project in the following calendar year,
- May not be allocated at any time after such following calendar year, and
- May be allocated no later than December 31, 2025.

Any HOTC amounts issued by VHDA that are later either canceled and returned to VHDA, or recaptured or disallowed may be awarded in the following calendar year, but no later than December 31, 2025.

In addition to the $60 million annual cap, the multi-year cap on the HOTC program is $255 million. Such cap does not apply per calendar year but instead across all calendar years for which the HOTC is effective. As a result, such multi-year cap applies for Calendar Year 2021 through Calendar Year 2025.

VHDA must provide information, data, and any other requested advisement on the potential structure and cost of a separately authorized certificated program upon a request from the Chairs of the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance and Appropriations.

Of the annual cap of $60 million, $20 million must 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. Such allocation of HOTC constitutes 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 is permitted to be allocated for any qualified project, regardless of location. In allocating or allowing such credits to qualified projects in such localities, VHDA is required to 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 federal law.

Sunset Dates for Income Tax Credits and Sales Tax Exemptions

Section 3-5.13 of the Appropriation Act provides that the General Assembly may not advance the sunset date for any existing income tax credit or sales tax exemption beyond June 30, 2030.

Further, during the 2012 Session, the General Assembly enacted House Bill 246 (2012 *Acts of Assembly*, Chapter 265), which prohibits legislation from adding a new credit or renewing an existing credit unless the legislation contains a sunset date of no longer than five years from the effective date of the new or renewed credit.

Proposal

This bill would extend the sunset date for the HOTC from January 1, 2026 to January 1 2031, and the annual credit roll-over deadline from December 31, 2025 to December 31, 2030. For Calendar Years 2026 through 2030, this bill would increase the annual cap on the HOTC by $190 million per year from $60 million to $250 million per year. Credits issued each calendar year cannot be claimed immediately, instead the credits issued each calendar year are allowed ratably, with one-tenth of the total amount of credits allowed annually for 10 years over the credit period.

This bill would also make a corresponding increase in the multi-year cap on the HOTC of $1.25 billion from $255 million to $1.505 billion. Such cap does not apply per calendar year but instead across all calendar years for which the HOTC is effective. As a result, such multi-year cap applies for Calendar Year 2026 through Calendar Year 2030.

The bill would require that 33 percent of the tax credits issued yearly be reserved for qualified projects located in a geographic area within the Balance of State Pool. VHDA uses 11 different “pools” to divide funding between various priorities and geographic areas such as nonprofit, new construction, preservation etc.

"Balance of State Pool" means the pool defined within the Qualified Allocation Plan promulgated by the VHDA and represents the remaining geographic area of Virginia after the Northern Virginia, Northwest/North Central Virginia, Richmond MSA, and Tidewater MSA geographic areas are excluded.

The bill would allow, but no longer require the VHDA to give equal consideration to projects allocated or allowed a LIHTC in an amount equal to the 10-year present value calculation of the percentages recommended under the United States Code.

If enacted during the regular session of the 2025 General Assembly, this bill would become effective July 1, 2025.

Similar Bills

HB 2048 would require the DHCD to conduct an annual geographic equity assessment, extend the HOTC through TY 2030 and provide $12 million credits be allocated to certain distressed localities, and establish the community investment tax credit.

SB 828 is identical to this bill.

cc : Secretary of Finance

Date: 01/16/2025 ALS
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