

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia, relating to Virginia
2 housing opportunity tax credit.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 58.1-439.29 and 58.1-439.30 of the Code of Virginia are amended and reenacted as**
5 **follows:**

6 **§ 58.1-439.29. Definitions.**

7 As used in this article, unless the context requires a different meaning:

8 "Authority" means the Virginia Housing Development Authority, or its successor agency.

9 "Balance of State Pool" means the pool defined within the Qualified Allocation Plan promulgated
10 by the Authority pursuant to § 42 of the Internal Revenue Code, as amended.

11 "Credit period" means the credit period as defined in § 42(f)(1) of the Internal Revenue Code, as
12 amended.

13 "Eligibility certificate" means a certificate issued by the Authority to the owner of a qualified
14 project certifying that such project qualifies for the Virginia housing opportunity tax credit authorized by
15 this article, and specifying the amount of housing opportunity tax credits that the owner of such qualified
16 project may claim in each year of the credit period. The Authority shall issue an eligibility certificate to a
17 qualified project upon the Authority's approval of a final cost certification that complies with the
18 Authority's requirements.

19 "Federal low-income housing tax credit" means the federal tax credit as provided in § 42 of the
20 Internal Revenue Code, as amended.

21 "Housing opportunity tax credit" or "tax credit" means the tax credit created by this article.

22 "Qualified project" means a qualified low-income building, as defined in § 42(c) of the Internal
23 Revenue Code, as amended, that is located in Virginia, is placed in service on or after January 1, 2021,
24 and is issued an eligibility certificate.

25 "Qualified taxpayer" means a taxpayer owning an interest, direct or indirect, through one or more
26 pass-through entities, in a qualified project at any time prior to filing a tax return claiming a housing
27 opportunity tax credit.

28 "Taxpayer" means an individual, corporation, S corporation, partnership, limited partnership,
29 limited liability partnership, limited liability company, joint venture, or nonprofit organization.

30 "Virginia tax liability" means the income taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§
31 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of this chapter, Chapter 12 (§ 58.1-1200 et seq.), Article 1
32 (§ 58.1-2500 et seq.) of Chapter 25, and Article 2 (§ 58.1-2620 et seq.) of Chapter 26. An insurance
33 company claiming a housing opportunity tax credit against the taxes, licenses, and other fees, fines, and
34 penalties imposed by Article 1 of Chapter 25, including any retaliatory tax imposed on insurance
35 companies by the Code of Virginia, shall not be required to pay any additional tax as a result of claiming
36 the housing opportunity tax credit. The housing opportunity tax credit may fully offset any retaliatory tax
37 imposed by the Code of Virginia.

38 **§ 58.1-439.30. Virginia housing opportunity tax credit.**

39 A. Subject to the provisions of subsection H, a housing opportunity tax credit ~~shall~~ may be allowed
40 for each qualified project for each year of the credit period, in an amount up to the amount of federal low-
41 income housing tax credit allocated or allowed by the Authority to such qualified project. The credit shall
42 be allowed ratably for each qualified project, with one-tenth of the total credit amount allowed annually
43 for 10 years over the credit period, except that there shall be a reduction in the tax credit allowable in the
44 first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2) and any reduction by reason of
45 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable year of the credit period shall be allowable
46 for the first taxable year following the credit period.

47 B. 1. For taxable years beginning on and after January 1, 2021, but before January 1, ~~2026~~ 2031,
48 a qualified taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to
49 reduction by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated
50 by pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to
51 by such persons, regardless of whether or not any such person is allocated or allowed any portion of any

52 federal low-income housing tax credit with respect to the qualified project, whether or not the allocation
53 of the housing opportunity tax credit under the terms of the agreement has substantial economic effect
54 within the meaning of § 704(b) of the Internal Revenue Code, and whether any such person is deemed a
55 partner for federal income tax purposes as long as the partner or member would be considered a partner
56 or member as defined under applicable state law, and has been admitted as a partner or member on or
57 prior to the date for filing the qualified taxpayer's tax return, including any amendments thereto, with
58 respect to the year of the housing opportunity tax credit. Such pass-through entities or qualified taxpayer
59 may assign all or any part of its interest, including its interest in the tax credits, to one or more pass-
60 through entities or qualified taxpayers, and the qualified taxpayer shall be able to claim the housing
61 opportunity tax credit so long as its interest is acquired prior to the filing of its tax return claiming the
62 housing opportunity tax credit.

63 2. If a housing opportunity tax credit has been awarded according to the terms of subsection G
64 prior to January 1, ~~2026~~ 2031, such credit may continue to be claimed on a return for taxable years on and
65 after January 1, ~~2026~~ 2031, but only pursuant to the applicable credit period specified in § 58.1-439.29.

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

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

78 E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income
79 housing credits taken on a qualified project is required to be recaptured or is otherwise disallowed during
80 the credit period, the taxpayer claiming housing opportunity tax credits with respect to such project shall
81 also be required to recapture a portion of any tax credits authorized by this article. The percentage of
82 housing opportunity tax credits subject to recapture shall be equal to the percentage of federal low-income
83 housing credits subject to recapture or otherwise disallowed during such period. Any tax credits recaptured
84 or disallowed shall increase the income tax liability of the qualified taxpayer who claimed the tax credits
85 in a like amount and shall be included on the tax return of the qualified taxpayer submitted for the taxable
86 year in which the recapture or disallowance event is identified. The balance of any tax credits recaptured
87 or disallowed shall be allocated by the Authority for any qualified project in accordance with subsection
88 G.

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

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

103 2. Such housing opportunity tax credits issued pursuant to this subsection shall be allowed ratably,
104 with one-tenth of the total amount of credits allowed annually for 10 years over the credit period, except

105 that there shall be a reduction in the tax credit allowable in the first year of the credit period due to the
106 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
107 allowable for the first taxable year of the credit period shall be allowable for the first taxable year following
108 the credit period.

109 H. 1. Notwithstanding any other provision of law to the contrary, the aggregate amount of housing
110 opportunity tax credits authorized for all qualified projects under this article shall not exceed \$1.505 billion
111 across all calendar years.

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

114 ~~2-3.~~ For calendar years 2022 through 2025, the total amount of housing opportunity tax credits
115 authorized for qualified projects under this article shall not exceed \$60 million per calendar year. ~~Such~~
116 ~~credits issued each calendar year shall be allowed ratably, with one-tenth of the total amount of credits~~
117 ~~allowed annually for 10 years over the credit period, except that there shall be a reduction in the tax credit~~
118 ~~allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2) and any~~
119 ~~reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable year of the credit~~
120 ~~period shall be allowable for the first taxable year following the credit period.~~

121 ~~3.~~ ~~Notwithstanding any other provision of law to the contrary, the aggregate amount of housing~~
122 ~~opportunity tax credits authorized for all qualified projects under this article shall not exceed \$255 million~~
123 ~~across all calendar years.~~ 4. For calendar years 2026 through 2030, the total amount of housing opportunity
124 tax credits authorized for qualified projects under this article shall not exceed \$250 million per calendar
125 year.

126 5. Such credits issued on and after January 1, 2022, shall be allowed ratably, with one-tenth of the
127 total amount of credits allowed annually for 10 years over the credit period, except that there shall be a
128 reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 U.S.C.
129 § 42(f)(2) and any reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable
130 year of the credit period shall be allowable for the first taxable year following the credit period.

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

136 J. The Authority shall, upon request from the Chairs of the House Committee on Appropriations,
137 the House Committee on Finance, and the Senate Committee on Finance and Appropriations, provide
138 information, data, and any other requested advisement on the potential structure and cost of a separately
139 authorized certificated Virginia housing opportunity tax credit program that would allow a qualified
140 project to sell all or any portion of its Virginia housing opportunity tax credits, to one or more unrelated
141 taxpayers based on findings in the report of the Department of Housing and Community Development and
142 the Authority stakeholder advisory group submitted pursuant to Chapter 517 of the Acts of Assembly of
143 2020.

144 K. a. Of the \$60 million of Virginia housing opportunity tax credits authorized per calendar year
145 from 2022 through 2025 for qualified projects by the Authority pursuant to this article, \$20 million of
146 such credits shall be first allocated exclusively for qualified projects located in a locality with a population
147 no greater than 35,000 as determined by the most recent United States census.

148 b. Of the \$250 million of Virginia housing opportunity tax credits authorized per calendar year
149 from 2026 through 2030 for qualified projects by the Authority pursuant to this article, 33 percent of such
150 credits shall be reserved for qualified projects located in a geographic area within the Balance of State
151 Pool. The Authority shall notify the Virginia Housing Commission upon any change to the Balance of
152 State Pool.

153 c. Such allocation of Virginia housing opportunity tax credits shall constitute the minimum amount
154 of such tax credits to be allocated for qualified projects in such localities. However, if the amount of such
155 tax credits requested for qualified projects in such localities is less than the total amount of such credits
156 available for qualified projects in such localities, the balance of such credits shall be allocated for any
157 qualified project, regardless of location. In allocating or allowing such credits to qualified projects in such

158 localities, the Authority ~~shall~~ may give equal consideration to qualified projects allocated or allowed a
159 federal low-income housing credit in an amount equal to the 10-year present value calculation of the
160 percentages prescribed under 26 U.S.C. §§ 42(b)(1)(B)(i) and 42(b)(1)(B)(ii).

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