

SENATE BILL NO. _____ HOUSE BILL NO. _____

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

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

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

5 **§ 58.1-439.30. Virginia housing opportunity tax credit.**

6 A. Subject to the provisions of subsection H, a housing opportunity tax credit shall be allowed for
7 each qualified project for each year of the credit period, in an amount up to the amount of federal low-
8 income housing tax credit allocated or allowed by the Authority to such qualified project. The credit shall
9 be allowed ratably for each qualified project, with one-tenth of the total credit amount allowed annually
10 for 10 years over the credit period, except that there shall be a reduction in the tax credit allowable in the
11 first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2) and any reduction by reason of
12 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable year of the credit period shall be allowable
13 for the first taxable year following the credit period.

14 B. 1. For taxable years beginning on and after January 1, 2021, but before January 1, ~~2026~~ 2031,
15 a qualified taxpayer may claim a housing opportunity tax credit against its Virginia tax liability prior to
16 reduction by any other credits allowed the taxpayer. The housing opportunity tax credit may be allocated
17 by pass-through entities to some or all of its partners, members, or shareholders in any manner agreed to
18 by such persons, regardless of whether or not any such person is allocated or allowed any portion of any
19 federal low-income housing tax credit with respect to the qualified project, whether or not the allocation
20 of the housing opportunity tax credit under the terms of the agreement has substantial economic effect
21 within the meaning of § 704(b) of the Internal Revenue Code, and whether any such person is deemed a
22 partner for federal income tax purposes as long as the partner or member would be considered a partner
23 or member as defined under applicable state law, and has been admitted as a partner or member on or
24 prior to the date for filing the qualified taxpayer's tax return, including any amendments thereto, with
25 respect to the year of the housing opportunity tax credit. Such pass-through entities or qualified taxpayer

26 may assign all or any part of its interest, including its interest in the tax credits, to one or more pass-
27 through entities or qualified taxpayers, and the qualified taxpayer shall be able to claim the housing
28 opportunity tax credit so long as its interest is acquired prior to the filing of its tax return claiming the
29 housing opportunity tax credit.

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

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

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

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

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

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

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

70 2. Such housing opportunity tax credits issued pursuant to this subsection shall be allowed ratably,
71 with one-tenth of the total amount of credits allowed annually for 10 years over the credit period, except
72 that there shall be a reduction in the tax credit allowable in the first year of the credit period due to the
73 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
74 allowable for the first taxable year of the credit period shall be allowable for the first taxable year following
75 the credit period.

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

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

81 ~~2.3. For calendar years 2022 through 2025, the total amount of housing opportunity tax credits~~
82 ~~authorized for qualified projects under this article shall not exceed \$60 million per calendar year. Such~~
83 ~~credits issued each calendar year shall be allowed ratably, with one-tenth of the total amount of credits~~
84 ~~allowed annually for 10 years over the credit period, except that there shall be a reduction in the tax credit~~
85 ~~allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2) and any~~
86 ~~reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable year of the credit~~
87 ~~period shall be allowable for the first taxable year following the credit period.~~

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

93 5. Such credits issued on and after January 1, 2022, shall be allowed ratably, with one-tenth of the
94 total amount of credits allowed annually for 10 years over the credit period, except that there shall be a
95 reduction in the tax credit allowable in the first year of the credit period due to the calculation in 26 U.S.C.
96 § 42(f)(2) and any reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable
97 year of the credit period shall be allowable for the first taxable year following the credit period.

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

103 J. The Authority shall, upon request from the Chairs of the House Committee on Appropriations,
104 the House Committee on Finance, and the Senate Committee on Finance and Appropriations, provide
105 information, data, and any other requested advisement on the potential structure and cost of a separately

106 authorized certificated Virginia housing opportunity tax credit program that would allow a qualified
107 project to sell all or any portion of its Virginia housing opportunity tax credits, to one or more unrelated
108 taxpayers based on findings in the report of the Department of Housing and Community Development and
109 the Authority stakeholder advisory group submitted pursuant to Chapter 517 of the Acts of Assembly of
110 2020.

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

115 b. Of the \$250 million of Virginia housing opportunity tax credits authorized per calendar year
116 from 2026 through 2030 for qualified projects by the Authority pursuant to this article, 33 percent of such
117 credits shall be first allocated exclusively for qualified projects not located in a geographic area qualifying
118 as an urban area as identified in the most recent United States Census.

119 c. Such allocation of Virginia housing opportunity tax credits shall constitute the minimum amount
120 of such tax credits to be allocated for qualified projects in such localities. However, if the amount of such
121 tax credits requested for qualified projects in such localities is less than the total amount of such credits
122 available for qualified projects in such localities, the balance of such credits shall be allocated for any
123 qualified project, regardless of location. In allocating or allowing such credits to qualified projects in such
124 localities, the Authority shall give equal consideration to qualified projects allocated or allowed a federal
125 low-income housing credit in an amount equal to the 10-year present value calculation of the percentages
126 prescribed under 26 U.S.C. §§ 42(b)(1)(B)(i) and 42(b)(1)(B)(ii).

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