

SENATE BILL NO. 47

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

on February 28, 2022)

(Patron Prior to Substitute--Senator Locke)

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

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. 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 equal up to the amount of federal low-income housing tax credit allocated or allowed by the Authority to such qualified project, except that there shall be no 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). 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

27 within the meaning of § 704(b) of the Internal Revenue Code, and whether ~~or not~~ any such person is
28 deemed a partner for federal income tax purposes as long as the partner or member would be considered
29 a partner or member as defined under applicable state law, and has been admitted as a partner or member
30 on or prior to the date for filing the qualified taxpayer's tax return, including any amendments thereto,
31 with respect to the year of the housing opportunity tax credit. Such pass-through entities or qualified
32 taxpayer may assign all or any part of its interest, including its interest in the tax credits, to one or more
33 pass-through entities or qualified taxpayers, and the qualified taxpayer shall be able to claim the housing
34 opportunity tax credit so long as its interest is acquired prior to the filing of its tax return claiming the
35 housing opportunity tax credit.

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

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

42 D. A qualified taxpayer claiming a housing opportunity tax credit shall submit a copy of the
43 eligibility certificate at the time of filing its tax return with the Department. If the owner of the qualified
44 project has applied to the Authority for the eligibility certificate but the Authority has not yet issued the
45 eligibility certificate at the time the qualified taxpayer files its original tax return claiming the housing
46 opportunity tax credit, the taxpayer may claim the housing opportunity tax credit based upon the amount
47 of tax credit set forth in the ~~carryover allocation or 42(m) letter, as applicable,~~ award letter issued by the
48 Authority for the housing opportunity tax credit issued to the qualified project and shall amend its tax
49 return to include the eligibility certificate upon its receipt. If the amount of tax credit in the eligibility
50 certificate is different than the amount of tax credit previously claimed, the taxpayer shall adjust the tax
51 credit amount claimed on the amended tax return.

52 E. If under § 42 of the Internal Revenue Code, as amended, a portion of any federal low-income
53 housing credits taken on a qualified project is required to be recaptured or is otherwise disallowed during

54 the credit period, the taxpayer claiming housing opportunity tax credits with respect to such project shall
55 also be required to recapture a portion of any tax credits authorized by this article. The percentage of
56 housing opportunity tax credits subject to recapture shall be equal to the percentage of federal low-income
57 housing credits subject to recapture or otherwise disallowed during such period. Any tax credits recaptured
58 or disallowed shall increase the income tax liability of the qualified taxpayer who claimed the tax credits
59 in a like amount and shall be included on the tax return of the qualified taxpayer submitted for the taxable
60 year in which the recapture or disallowance event is identified. The balance of any tax credits recaptured
61 or disallowed shall be allocated by the Authority for any qualified project in accordance with subsection
62 G.

63 F. The Authority shall administer the housing opportunity tax credit program and shall be
64 authorized to promulgate the regulations and guidelines necessary to implement and administer ~~the~~
65 ~~provisions of~~ this article. Such regulations and guidelines may include the imposition of application,
66 allocation, certification, and monitoring fees designed to recoup the costs of the Authority in administering
67 the housing opportunity tax credit program. ~~The Authority may also promulgate regulations and guidelines~~
68 ~~in consultation with the Department to allow a qualified project to elect in its application to the Authority~~
69 ~~to sell all or any portion of its credits awarded pursuant to this article to one or more unrelated taxpayers.~~
70 ~~Regulations and guidelines regarding the sale of credits, if promulgated, shall not take effect prior to~~
71 ~~January 1, 2023, and shall not apply to credits awarded prior to January 1, 2023.~~

72 G. 1. Any housing opportunity tax credit amounts authorized in a calendar year that are
73 subsequently (i) canceled and returned to the Authority or (ii) recaptured or disallowed pursuant to
74 subsection E may be awarded in the following calendar year, but no later than December 31, 2025. If the
75 amount of housing opportunity tax credits authorized in a calendar year for qualified projects is less than
76 the total amount of credits available for qualified projects under subdivision H 2, the balance of such
77 credits, in an amount not greater than 20 percent of the amount of credits available for qualified projects
78 under subdivision H 2, (i) shall be allocated by the Authority for any qualified project in the following
79 calendar year, (ii) shall not be allocated at any time after such following calendar year, and (iii) shall be
80 allocated no later than December 31, 2025.

81 2. Such housing opportunity tax credits issued pursuant to this subsection shall be allowed ratably,
82 with one-tenth of the total amount of credits allowed annually for 10 years over the credit period, except
83 that there shall be a reduction in the tax credit allowable in the first year of the credit period due to the
84 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
85 allowable for the first taxable year of the credit period shall be allowable for the first taxable year following
86 the credit period.

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

89 2. For calendar years 2022 through 2025, the total amount of housing opportunity tax credits
90 authorized for qualified projects under this article shall not exceed \$15 million per calendar year. Such
91 credits issued each calendar year shall be allowed ratably, with one-tenth of the total amount of credits
92 allowed annually for 10 years over the credit period, except that there shall be a reduction in the tax credit
93 allowable in the first year of the credit period due to the calculation in 26 U.S.C. § 42(f)(2) and any
94 reduction by reason of 26 U.S.C. § 42(f)(2) in the credit allowable for the first taxable year of the credit
95 period shall be allowable for the first taxable year following the credit period.

96 3. Notwithstanding any other provision of law to the contrary, the aggregate amount of housing
97 opportunity tax credits authorized for all qualified projects under this article shall not exceed \$75 million
98 across all calendar years.

99 **2. That notwithstanding any provision of law or regulation to the contrary, only housing**
100 **opportunity tax credits awarded in calendar year 2021, up to a maximum of \$15 million total for all**
101 **taxpayers in all taxable years, may be claimed pursuant to the provisions of § 58.1-439.30 of the**
102 **Code of Virginia as set forth in Chapter 495 of the Acts of Assembly of 2021, Special Session I, prior**
103 **to amendment by this act. Nothing in this enactment shall apply to § 58.1-439.30 of the Code of**
104 **Virginia as amended by this act.**

105 **3. That the Virginia Housing Development Authority (the Authority) shall, upon request from the**
106 **Chairs of the House Committee on Appropriations, the House Committee on Finance, and the**
107 **Senate Committee on Finance and Appropriations, provide information, data, and any other**

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

113 4. Of the \$15 million of housing opportunity tax credits authorized per calendar year from 2022
114 through 2025 for qualified projects by the Virginia Housing Development Authority (the Authority)
115 pursuant to Article 13.4 (§ 58.1-439.29 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia, as
116 amended by this act, \$5 million of such credits shall be first allocated exclusively for qualified
117 projects located in a locality with a population no greater than 35,000 as determined by the most
118 recent United States census. Such allocation of housing opportunity tax credits shall constitute the
119 minimum amount of such tax credits to be allocated for qualified projects in such localities.
120 However, if the amount of such tax credits requested for qualified projects in such localities is less
121 than the total amount of such credits available for qualified projects in such localities, the balance
122 of such credits shall be allocated for any qualified project, regardless of location. In allocating or
123 allowing such credits to qualified projects in such localities, the Authority shall give equal
124 consideration to qualified projects allocated or allowed a federal low-income housing credit in an
125 amount equal to the 10-year present value calculation of the percentages prescribed under 26 U.S.C.
126 §§ 42(b)(1)(B)(i) and 42(b)(1)(B)(ii).

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